



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार 21 नवम्बर, 2012/30 कार्तिक, 1934

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA -171 001

NOTIFICATION

Shimla, the 16th November, 2012

No.HHC/Admn.6 (18)77-VII.—In exercise of the powers vested in it under Section 13 of the Code of Criminal Procedure, 1973, the Hon'ble High Court of Himachal Pradesh has been pleased to confer the powers of Special Judicial Magistrate Second Class, upon the following IAS Probationers, attached for District Training with Deputy Commissioners of the Districts mentioned against their names, w.e.f. 10.12.2012 to 29.5.2013 to be exercised by them within their jurisdiction.

Sr. No.	Name of IAS Probationer	District
1.	Sh. Lalit Jain	Solan
2.	Sh. Rugved Milind Thakur	Mandi
3.	Sh. Vivek Bhatia	Bilaspur

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001

NOTIFICATION

Shimla the 17th November, 2012

No.HHC/GAZ/14-317/2010.—Hon'ble the Chief Justice has been pleased to grant 12 days' earned leave w.e.f. 26.11.2012 to 7.12.2012 with permission to prefix Sunday falling on 25.11.2012 and to suffix Second Saturday and Sunday falling on 8.12.2012 and 9.12.2012 in favour of Shri Sandeep Singh Sihag, Civil Judge (Junior Division)-cum-JMIC (2), Nurpur, District Kangra, H.P.

Certified that Shri Sandeep Singh Sihag is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Sandeep Singh Sihag would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC (2), Nurpur, District Kangra, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA - 171 001

NOTIFICATION

Shimla, the 17th November, 2012.

No.HHC/GAZ/14-290/2006.—Hon'ble the Chief Justice has been pleased to grant two days' earned leave for 19.11.2012 and 20.11.2012 with permission to prefix Sunday falling on 18.11.2012 in favour of Shri Sidharth Sarpal, Civil Judge (Junior Division)-cum-JMIC, Kandaghat, District Solan, H.P.

Certified that Shri Sidharth Sarpal is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Sidharth Sarpal would have continued to hold the post of Civil Judge (Junior Division)-cum-JMIC, Kandaghat, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH SHIMLA-171001**NOTIFICATION***Shimla the 16th November, 2012*

No. HHC/GAZ/14-272/2003.—Hon'ble the Chief Justice has been pleased to grant four days' earned leave w.e.f. 16.11.2012 to 19.11.2012 in favour of Shri Hoshiar Singh Verma, Civil Judge (Junior Division)-cum-JMIC(II), Paonta Sahib, District Sirmaur, H.P.

Certified that Shri Hoshiar Singh Verma is likely to join the same post and at the same station from where he proceeds on leave, after expiry of the above period of leave.

Also certified that Shri Hoshiar Singh Verma would have continued to hold the same post of Civil Judge (Junior Division)-cum-JMIC (II), Paonta Sahib, District Sirmaur, H.P., but for his proceeding on leave for the above period.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA-171001**NOTIFICATION***Shimla the 17th November, 2012*

No.HHC/Admn.6(23)/74-XIV.—Hon'ble the Chief Justice in exercise of the power vested in him under Rule 2 (32) of Chapter 1 of H.P. Financial Rule s, 2009 has been pleased to declare the Presiding Officer, Fast Track Court, Solan, as Drawing and Disbursing Officer in respect of the Court of Additional District and Sessions Judge, Solan and also the Controlling Officer for the purpose of T.A. etc. in respect of establishment attached to the aforesaid Court under head "2014 Administration of Justice" during the earned leave period of Shri J. N. Yadav, Additional District and Sessions Judge, Solan w.e.f. 20.11.2012 to 7.12.2012 with permission to suffix Second Saturday and Sunday falling on 8.12.2012 and 9.12.2012 or until he returns from leave.

By order,
Sd/-
Registrar General.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171001**NOTIFICATION***Shimla the 17th November, 2012*

No. HHC/Admn. 6 (23)/74-XIV.—Hon'ble the Chief Justice in exercise of the powers vested in him under Rule 2 (32) of Chapter I of H.P. Financial Rules, 2009, has been pleased to declare the Civil Judge (Senior Division)-cum-JMIC(1), Nurpur as Drawing and Disbursing Officer in respect of the Court of Civil Judge (Junior Division)-cum-JMIC(2), Nurpur and also the Controlling Officer for the purpose of T.A. etc. in respect of establishments attached to the aforesaid Court under head "2014-Administration of Justice" during the earned leave period of Shri Sandeep Singh Sihag, Civil Judge (Junior Division)-cum-JMIC(2), Nurpur w.e.f. 26.11.2012 to 7.12.2012 with permission to prefix Sunday falling on 25.11.2012 and to suffix Second Saturday and Sunday falling on 8.12.2012 and 9.12.2012 or until he returns from leave.

By order,
Sd/-
Registrar General.

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla-2, 15th November, 2012*

No. Sharm (A) 7-1/2005 (Award) –Loose.—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Dharamshala of the following cases on the website of Labour & Employment Department:-

Sr. No:	Case No:	Title of the Case	Date of Award
1.	108/10	Smt./Shri Sanjeev Kumar. M/S Him Valves	2-7-2012
2.	7/10	Gurcharan . EE I&PH Una	2-7-2012
3.	57/11	Bala Ram EE. HPPWD Dharampur	4-7-2012
4.	58/11	Bohari Devi EE. HPPWD Dharampur	4-7-2012
5.	53/11	Dalip Singh EE. HPPWD Dharampur	4-7-2012
6 .	49/11	Baldev Raj EE. HPPWD Dharampur	4-7-2012
7 .	63/11	Kirpa Ram EE. HPPWD Dharampur	4-7-2012
8.	37/11	Hukam Chand EE. HPPWD Dharampur	4-7-2012
9.	39/11	Ram Lal EE. HPPWD Dharampur	4-7-2012
10.	38/11	Surinder Singh EE. HPPWD Dharampur	4-7-2012
11.	41/11	Been Devi EE. HPPWD Dharampur	4-7-2012
12.	65/11	Tara Devi EE. HPPWD Dharampur	4-7-2012
13.	60/11	Roshani Devi EE. HPPWD Dharampur	4-7-2012
14.	40/11	Jagat Ram EE. HPPWD Dharampur	4-7-2012
15.	51/11	Kaula Devi EE. HPPWD Dharampur	4-7-2012
16.	50/11	Dalip Singh EE. HPPWD Dharampur	4-7-2012
17.	54/11	Sohan Singh EE. HPPWD Dharampur	4-7-2012
18.	55/11	Sant Ram EE. HPPWD Dharampur	4-7-2012
19.	48/11	Suresh Kumar EE. HPPWD Dharampur	4-7-2012
20.	59/11	Krishan Chander EE. HPPWD Dharampur	4-7-2012
21.	68/11	Pawan Kumar EE. HPPWD Dharampur	4-7-2012
22.	61/11	Nipla Devi EE. HPPWD Dharampur	4-7-2012
23.	62/11	Primla Devi EE. HPPWD Dharampur	4-7-2012
24.	64/11	Sharda Sharma EE. HPPWD Dharampur	4-7-2012
25.	342/09	Kashmir Singh EE HPSEB Gohar	10-7-2012
26.	216/10	Lal Singh EE.I&PH	10-7-2012
27.	449/09	Dila Ram GM Gammon Joint	10-7-2012
28.	2/11	Dinesh Kumar EE HP Polution Control	16-7-2012
29.	215/10	Rajinder Kumar DFO Suket	17-7-2012
30.	221/10	Devi Dass -do-	17-7-2012
31.	222/10	Goda Devi -do-	17-7-2012
32.	96/10	Gita Nand EE HPPWD	20-7-2012
33.	209/10	Bal Krishan & Ors. SE-HPSEB	20-7-2012
34.	100/11	Neena Kumari Project Dir. Mid Himalayan	21-7-2012
35.	249/12	Rajiv Chandel Director of Industary	31-7-2012
36.	449/09	Kailash Chand EE IPH Dalhousie	1-8-2012
37.	256/10	Naresh Kumar EE HPPWD Chamba	1-8-2012
38.	270/10	Kehar Singh -do-	1-8-2012
39.	4/10	Naresh Kumar -do-	1-8-2012
40.	266/10	Megho -do-	1-8-2012
41.	141/09	Gian Chand EE PSEB J/Nagar	6-8-2012
42.	135/11	Savitri Devi EE HPPWD Dharampur	8-8-2012
43.	136/11	Jai Singh EE HPPWD Dharampur	8-8-2012
44.	137/11	Basant Singh EE HPPWD Dharampur	8-8-2012
45.	138/11	Manoj Kumar EE HPPWD Dharampur	8-8-2012
46.	139/11	Partap Singh EE HPPWD Dharampur	8-8-2012
47.	144/11	Kameshwar Dutt EE HPPWD Dharampur	8-8-2012

48.	145/11	Som Raj	EE HPPWD Dharampur	8-8-2012
49.	146/11	Randhir Barwal	EE HPPWD Dharampur	8-8-2012
50.	147/11	Sanjay Kumar	EE HPPWD Dharampur	8-8-2012
51.	148/11	Bhim Singh	EE HPPWD Dharampur	8-8-2012
52.	149/11	Ramesh Chand	EE HPPWD Dharampur	8-8-2012
53.	150/11	Lekh Raj	EE HPPWD Dharampur	8-8-2012
54.	31/12	Nek Ram	EE HPPWD Dharampur	8-8-2012
55.	48/11	Sunil Kumar	EE HPPWD Dharampur	8-8-2012
56.	49/12	Ravi Chand	EE HPPWD Dharampur	8-8-2012
57.	51/12	Shamblu Ram	EE HPPWD Dharampur	8-8-2012
58.	52/12	Krishni Devi	EE HPPWD Dharampur	8-8-2012
59.	55/12	Tilku Devi	EE HPPWD Dharampur	8-8-2012
60.	58/12	Punjabi Devi	EE HPPWD Dharampur	8-8-2012
61.	59/12	Sarwan Dass	EE HPPWD Dharampur	8-8-2012
62.	60/12	Rita Devi	EE HPPWD Dharampur	8-8-2012
63.	61/12	Mohani Devi	EE HPPWD Dharampur	8-8-2012
64.	62/12	Sheela Devi	EE HPPWD Dharampur	8-8-2012
64.	65/12	Bimbla Devi	EE HPPWD Dharampur	8-8-2012
65.	66/12	Pawan Kumar	EE HPPWD Dharampur	8-8-2012
66.	68/12	Krishan Pal	EE HPPWD Dharampur	8-8-2012
67.	120/7	Anita Kumari	EE HPSEB	9-8-2012
68.	77/11	Aman Kumar	M/S Navneet Elect.	9-8-2012
69.	26/10	Hem Raj	EE HPPWD	9-8-2012
70.	276/12	Sanjay Kumar	Factory Manager	13-8-2012
71.	210/10	Pinki Devi	Pradhan Gram Panchayat	23-8-2012
72.	275/12	Deepak Kumar	Pr. Dr.Rajinder Prashad Medical College Tanda	24-8-2012
73.	152/12	Ishwar Singh	Dr.Y.S.Parmar University	24-8-2012
74.	153/12	Ravi Dutt	-do-	24-8-2012
75.	154/12	Mohinder Singh	-do-	24-8-2012
76.	155/12	Suresh Kumar	-do-	24-8-2012
77.	441/09	Amar Singh	Conservater of forest	28-8-2012
78.	300/12	Ambika Singh	BDO	31-8-2012
79.	75/11	Govind Ram	DFO Suket	1-9-2012
80.	271/10	Lala Ram	Settlement Officer D/Shala	1-9-2012
81.	226/10	Mohan Singh	Dir.Rural Devrlopment	1-9-2012
82.	10/08	Tulsi Tulsi	DFO Kullu	5-9-2012
83.	211/07	Som Dutt	-do-	5-9-2012
84.	88/12	Narinder Singh	SDM Chairman Baba Balak Nath	6-9-2012
85.	91/12	Rajinder Kumar	-do-	6-9-2012
86.	89/12	Ravinder Kumar	-do-	6-9-2012
87.	288/12	Lal Chand	EE HPPWD Killer	12-9-2012
88.	116/11	Bablu Ram	EE HPPWD Dharampur	13-9-2012
89.	1/12	Raj Kumar	-do-	13-9-2012
90.	2/12	Dharam Chand	-do-	13-9-2012
91.	3/12	Shakuntla Devi	-do-	13-9-2012
92.	5/12	Marhaju Devi	-do-	13-9-2012
93.	6/12	Kamla Devi	-do-	13-9-2012
94.	7/12	Kamli	-do-	13-9-2012

95.	9/12	Gorakh Nath	-do-	13-9-2012
96.	10/12	Beena Devi	-do-	13-9-2012
97.	11/12	Parkash Chand	-do-	13-9-2012
98.	14/12	Meera devi	-do-	13-9-2012
99.	15/12	Fulla Devi	-do-	13-9-2012
100	17/12	Atti Devi	-do-	13-9-2012
101	18/12	Riyaz Khan	-do-	13-9-2012
102	19/12	Ranjit Singh	-do-	13-9-2012
103	20/12	Heema Devi	-do-	13-9-2012
104	24/12	Brahmi Devi	-do-	13-9-2012
105	28/12	Ramesh Chand	-do-	13-9-2012
106	30/12	Inderi Devi	-do-	13-9-2012
107	32/12	Shashi Pal	-do-	13-9-2012
108	34/12	Fulmu Devi	-do-	13-9-2012
109	36/12	Sudi Devi	-do-	13-9-2012
110	28/12	Sukri devi	-do-	13-9-2012
111	41/12	Nand Lal	-do-	13-9-2012
112	42/12	Barfi Devi	-do-	13-9-2012
113	43/12	Bachitar Singh	-do-	13-9-2012
114	45/12	Dabar Singh	-do-	13-9-2012
115	46/12	Panchu Devi	-do-	13-9-2012
116	47/12	Sher Singh	-do-	13-9-2012
117	343/09	Lal Singh	EE-HPSEB	13-9-2012
118	16/10	Prem Singh	EE I&PH	13-9-2012
119	15/10	Partap Singh	-do-	13-9-2012
120	218/10	Madan Singh	EE-HPSEB	13-9-2012
121	109/11	Ram dyal	EE-HPPWD	14-9-2012
122	389/09	Shashi Kant	EE-HPSEB	14-9-2012
123	74/07	Raj Kumar	Sanik Welfare	14-9-2012
124	130/07	Sumeet Kumar	EO Nagar Parishad	19-9-2012
125	666/08	Kamal Nath	I&PH Dalhousie	19-9-2012
126	257/10	Hari Singh	DFO Banjar	20-9-2012
127	280/10	Hardeep Singh	MD Adinath Rubber	22-9-2012
128	134/11	Kartar Singh	Factory Manager M/s United Wares	24-9-2012
129	77/07	Shaym Lal	Naveen Kumar & Ors.	24-9-2012
130	314/12	Bir Singh	DFO Chamba	25-9-2012
131	21/10	Roop Lal	EE HPPWD Dharampur	25-9-2012
132	365/09	Sarla Devi	-do-	25-9-2012
133	110/11	Lachman Singh	DFO Sundernagar	26-9-2012
134	86/10	Bhatku Ram	EE HPPWD	27-9-2012

By order,

Sd/-

Addl. Chief Secretary (Labour & Employment).

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 41/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Smt. Beena Devi w/o Shri Jai Lal, r/o Village Karyal, P.O. Sadhot, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Beena Devi w/o Sh. Jai Lal, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 01.2.2000. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-

N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner's) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside
- ii. The permission granted by the specified authority-cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.2.2000 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?

. .OPP

2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?

. .OPP

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed.

Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Beena Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt.

Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 02.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.2.2000 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 209/2010

Date of Institution : 04.08.2010

Date of Decision : 20.07.2012

S/Sh. Bal Krishan s/o Sh. Bihari Lal, Lekh Raj s/o Sh. Shankar Dass, Netar Singh s/o Sh. Dinga Ram, Brij Lal s/o Sh. Sunka Ram, Sukh Ram s/o Sh. Chughu Ram, Jagdish Chand s/o Sh. Sant Ram, Om Prakash s/o Sh. Basant Ram and Ramesh Kumar s/o Sh. Perma Ram, through Sh. N.L. Kondal, Legal Advisor (BMS), H.Q. Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, Distt. Mandi, H.P.

....Petitioners

Versus

The Superintending Engineer, (Power Wing) HPSEB Circle Palampur, Distt. Kangra, H.P. & Resident Engineer, HPSEB, Bassi Power House, Joginder Nagar, Distt. Mandi, H.P.

....Respondents

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioners : Sh. N.L. Kaundal, AR : Sh. Vijay Kaundal, Adv.

For the Respondents : Sh. B.K. Sood, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether demand of S/Sh. Bal Krishan s/o Sh. Bihari Lal, Lekh Raj s/o Sh. Shankar Dass, Netar Singh s/o Sh. Dinga Ram, Brij Lal s/o Sh. Sunka Ram, Sukh Ram s/o Sh. Chughu Ram, Jagdish Chand s/o Sh. Sant Ram, Om Prakash s/o Sh. Basant Ram and Ramesh Kumar s/o Sh. Perma Ram before The Superintending Engineer, (Power Wing) HPSEB Circle Palampur, Distt. Kangra, H.P. & Resident Engineer, HPSEB, Bassi Power House, Joginder Nagar, Distt. Mandi, H.P., who were regularized by HPSEB on February, 1997 to regularize their services on completion of 10 years of continuous service on 01.01.1994 as per judgment of Hon’ble Supreme Court of India of 1994 in case of Mool Raj Upadhyay V/S State of H.P. & Others, is proper and justified? If yes, what relief of service benefits the above workmen are entitled to?”

2. The case of the petitioners (as set out in the statement of claim/demand) is reproduced below for ready reference and the sake of convenience.

- “1. (i) That the services of applicant Sh. Bal Krishan s/o Sh. Bihari Lal have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. February, 1983 and he had been continuously worked as such on 02.02.1997.
- (ii) That the services of applicant Sh. Lekh Raj s/o Sh. Shankar Dass have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. September, 1984 and he had been continuously worked as such on 02.02.1997.

- (iii) That the services of applicant Sh. Netar Singh s/o Sh. Dhingu Ram have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. May, 1984 and he had been continuously worked as such on 02.02.1997.
 - (iv) That the services of applicant Sh. Brij Lal s/o Sh. Sunka Ram have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. June, 1984 and he had been continuously worked as such on 02.02.1997.
 - (v) That the services of applicant Sh. Sukh Ram s/o Sh. Chughu Ram have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. April, 1985 and he had been continuously worked as such on 14.02.1997.
 - (vi) That the services of applicant Sh. Jagdish Chand s/o Sh. Sant Ram have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. 30.4.1984 and he had been continuously worked as such on 02.02.1997.
 - (vii) That the services of applicant Sh. Om Prakash s/o Sh. Basant Ram have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. May, 1983 and he had been continuously worked as such on 02.02.1997.
 - (viii) That the services of applicant Sh. Ramesh Kumar s/o Sh. Perma Ram have been engaged by the HPSEB, Bassi Power House on muster roll on daily waged basis w.e.f. September, 1983 and he had been continuously worked as such on 02.02.1997.
2. That all the above named applicants were working under the Assistant Engineer, Bassi Power House, Electrical & Maintenance Sub Division during their services on daily wages basis.
 3. That the services of all the applicants except Sh. Sukh Ram have been appointed on the work-charge status as Helper by the Superintending Engineer, (Generation) w.e.f. 03.02.1997 and the services of Sh. Sukh Ram have been appointed on work charge status w.e.f. 15.02.1997 in the regular pay scale 800-30-950-35-1160-40-1320-45-1455 + usual allowance sanctioned from time to time.
 4. That it is specifically stated here that as per the judgment of Hon'ble Supreme Court of India case titled Mool Raj Upadhaya V/S State of H.P. & Others in which the State Government has regularized the services of those daily wagger who were working in various government department under the State Government who have been completed 10 years continuous services in work charge status in regular pay scale as fixed by the State Government in categories.
 5. (i) That the applicant Sh. Bal Krishan has joined as daily waged basis w.e.f. February, 1983 continuously without any breaks and he had been completed more than 10 years as on 31.12.1993 and he is

entitled as work-charge status w.e.f. 01.01.1994 instead of 03.02.1997 on regular pay scale.

- (ii) That the applicant Sh. Lekh Raj has joined as daily waged basis w.e.f. 26.09.1984 continuously without any breaks and he had been completed more than 10 years as on 25.09.1994 and he is entitled as work-charge status w.e.f. 26.09.1994 instead of 03.02.1997 on regular pay scale.
 - (iii) That the applicant Sh. Netar Singh has joined as daily waged basis w.e.f. May, 1984 continuously without any breaks and he had been completed more than 10 years as on 30.04.1994 and he is entitled as work-charge status w.e.f. 01.05.1994 instead of 03.02.1997 on regular pay scale.
 - (iv) That the applicant Sh. Brij Lal has joined as daily waged basis w.e.f. 26.06.1984 continuously without any breaks and he had been completed more than 10 years as on 25.06.1994 and he is entitled as work-charge status w.e.f. 26.06.1994 instead of 03.02.1997 on regular pay scale.
 - (v) That the applicant Sh. Sukh Ram has joined as daily waged basis w.e.f. 26.04.1985 continuously without any breaks and he had been completed more than 10 years as on 25.04.1995 and he is entitled as work-charge status w.e.f. 26.04.1995 instead of 15.02.1997 on regular pay scale.
 - (vi) That the applicant Sh. Jagdish Chand has joined as daily waged basis w.e.f. 30.04.1984 continuously without any breaks and he had been completed more than 10 years as on 30.04.1994 and he is entitled as work-charge status w.e.f. 01.05.1994 instead of 03.02.1997 on regular pay scale.
 - (vii) That the applicant Sh. Om Prakash has joined as daily waged basis w.e.f. May, 1983 continuously without any breaks and he had been completed more than 10 years as on 31.12.1993 and he is entitled as work-charge status w.e.f. 01.01.1994 instead of 03.02.1997 on regular pay scale.
 - (viii) That the applicant Sh. Ramesh Kumar has joined as daily waged basis w.e.f. September, 1983 continuously without any breaks and he had been completed more than 10 years as on 31.12.1993 and he is entitled as work-charge status w.e.f. 01.01.1994 instead of 03.02.1997 on regular pay scale.
6. That the action of the respondents to not granted the work-charge status to the applicants after completion of their 10 year continuous service is highly unjustified, arbitrary, unconstitutional, contrary and against the judgment passed by the Hon'ble Apex Court in case titled Mool Raj Upadhaya v/s State of H.P. & others in SLR 1994-378 and similar view has again recalled by the Hon'ble Apex Court in 2007 FLR-434 case titled State of H.P. & Others v/s Gehar Singh in which the Hon'ble Apex Court has not interfered

the judgment passed in case of Mool Raj Upadhaya (supra) the Hon'ble Apex Court has held the work charge status be granted to all the daily wager workmen working in government department and who have been completed 10 years continuous service and on the basis of this judgment the state government of H.P. has implemented the order of Apex Court and the same has been complied by the government department.

7. That the HPSEB is also the state government department but the said order of Apex Court has not implemented by the board till today and same has been violated the order of state government as well as Apex Court.
8. That it is specifically stated here before 1997 the HPSEB has made his own service rules and fixed the criteria for work charge status for five years and those who have been completed 5 years services have been granted work charge status in regular pay scale. But in this case all the applicants have been completed more than 13 or 14 year continuous service have been granted the work charge status w.e.f. 03.02.1997 and 15.02.1997 and the same has been violated against the service rules of the board.
9. That all the workmen have been jointly represented to the board vide their representation dated 03.06.1996, 02.11.1998 and 16.04.2001 but no reply has been given regarding their representation by the board and thereafter the applicants have been raised their demand notice dated 20.04.2004 and after completion of more than 6 years before the conciliation the matter has been referred by the appropriate government dated 12.07.2010 so it is not the fault of workmen to raise the industrial dispute on belated stage.

Reliefs:

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

- (i) The Hon'ble Court may kindly be set aside the work charge order of all the workmen dated 03.02.1997 and 15.02.1997 and directed to respondents to grant them work charge status as Helper after completion of their 10 years continuous service and also directed to pay the arrear of salary and other consequential service benefits throughout.
- (ii) The Hon'ble Court again directed to respondent to pay the interest on arrear @ 12% from the date of due amount to till the date of realization the amount along with litigation cost Rs.5000/- each workman in the interest of justice and justice be done. The applicant shall ever pray".

3. On notice, the respondents appeared. They filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable in the present form. The petitioners are estopped from filing the petition by their act, conduct and acquiescence. All the petitioners are the regular employees of the Board (respondent). They do not fall within the purview of the Industrial Disputes Act, 1947 ('the Act' for short) and are not entitled to file the petition. The claim put forth by the petitioners is time barred. Their services were regularized way back in the year 1997. The petitioners joined as such without any protest. The instant industrial dispute was raked up by them in the year 2004 i.e. after the lapse of seven years from the date of the regularization of their

services. On merits, it has been owned that the services of the petitioners were engaged as daily wagers and were regularized in the year 1997. The promotion or regularization varies from worker to worker working in a Division and the vacancies in a particular Division or wing of the Electricity Board. The regularization of daily waged workers was ordered in terms of the settlement arrived at before the Hon'ble Supreme Court of India in Civil Writ Petitions No. 788/1987, 705/1987 and 398/1988. In the above numbered writ petitions, a settlement took place with regard to the regularization of daily paid workers working in various units of the Board. As per the settlement, the regularization is to be strictly made on the basis of seniority of each category of daily paid staff subject to the availability of the posts and no new posts are/were to be created. The petitioners were junior workmen at the time of the settlement. Their seniors were considered as per the settlement for regularization against the available vacancies. The seniority list of daily waged workers is maintained at divisional level. After the settlement, some regularizations were made against the vacancies available in the concerned Division. The workers of other Divisions could not be regularized against the vacancies despite the fact that they are/were seniors being divisional level cadre. The claim of the petitioners for seniority or regularization from back date against the vacancies of other Divisions is not tenable. Work-charge status has been given to the petitioners as per seniority and on the availability of the posts. The orders of the Hon'ble Apex Court are being complied with in their letter and spirit. HPSEB (Himachal Pradesh State Electricity Board) has made its own service rules prior to the year 1997. As per the criteria fixed by the Board, work-charge status is given to those workers, who have completed five years of service. It stands admitted that the representations were received from the petitioners. No retrospective seniority can be awarded to the petitioners (as claimed) as per the policy of the Board. In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioners have reiterated the contents of the petition and refuted the objections put forth by the respondents. It has been pleaded that the settlement arrived at in CWPs No. 788/1987, 705/1987 and 398/1988 is not applicable since in the year 1994, the Government of Himachal Pradesh modified the regularization scheme for work-charge status employees. On the basis of this scheme, more than fifteen thousand workmen have been regularized by the State Government from time to time.

5. Vide order dated 01.4.2011, following issues were struck by my Id. Predecessor:

1. Whether the regularization of the petitioners in the year Feb, 1997 is violative of the policy envisaged by the respondent, and the petitioners were liable to be regularized after completion of 10 years of continuous service as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the petition is not maintainable as alleged. If so, to what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes, Partly No
Issue No.2 : Not pressed
Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Bal Krishan (one of the petitioners) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also proved Ex. PW1/B i.e. the demand notice served by the petitioners on the respondent/Board. In the cross-examination, he denied that he has deposed falsely and they (petitioners) have instituted a phoney petition.

9. Conversely, Shri Satish Kumar Sharma, Resident Engineer, Bassi Power House, Bassi, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he stated that the scheme prepared by the Government of Himachal Pradesh (as approved by the Hon'ble Apex Court in Mool Raj Upadhyay's case) is not applicable to the employees of the Electricity Board. He admitted that the work charge-status is being given to the employees by the Board even now. Self stated, the status is given subject to the availability of the posts. He admitted that the notifications issued by the Government of Himachal Pradesh are applicable to the Board. He admitted that the petitioners had completed 240 days of work in each calendar year of their employment. He also admitted that their services were regularized in the year 1997.

10. Mark-A is the copy of the order dated April 19, 1994 passed by the Hon'ble Supreme Court of India in Civil Writ Petition (Civil) Nos. 787/1987 titled as Sh. Mool Raj Upadhyaya vs. State of Himachal Pradesh & Ors.

11. Mark-B is the copy of the order dated 20th May, 1991 pronounced by the Hon'ble Apex Court in Writ Petition (Civil) No. 788/1987 with Civil Writ Petitions Nos. 705/1987 and 398/1988 titled as Giri P.H. Danik Karamchari Sangthan and Others vs. The State of Himachal Pradesh and Others etc.

12. Mark-C is the copy of the terms of settlement arrived at between the parties before the Hon'ble Apex Court in Writ Petitions (Civil) No. 788/1987, 705/1987 and 398/1988.

13. Relying upon the State of H.P. & Ors. vs. Gehar Singh, 2007 (113) FLR 434 (Supreme Court), Gauri Dutt & Ors., Petitioners vs. State of H.P., Respondent, Latest HLJ 2008 (HP) 366 and Ramesh Kumar, Petitioner vs. State of H.P. & Anr., Respondents, Latest HLJ 2010 (HP) 249, Id. counsel for the petitioners contended that since his clients had completed 10 years of continuous service as on 31.12.1993 or had rendered one or more year of service, but had not completed 10 years of service as on 31.12.1993, the work charge-status is/was required to be given to them after the completion of 10 years of continuous service.

14. On the other hand, Id. counsel for the respondents urged that the work-charge status has been given to the petitioners as per the terms of settlement arrived at between the parties in Civil Writ Petitions No. 788/1987, 705/1987 and 398/1988.

15. To my mind, the argument advanced by the Id. counsel for the petitioners holds the force and is sustainable. The copy of letter dated 28.8.2007 issued by the Electricity Board is there on the record. It unfolds that the services of the daily waged workers of the Board are/were required

to be regularized on completion of the required daily waged services as per the policy of the Government. It appears that Mark-C was one time settlement between the parties to Civil Writ Petitions No. 788/1987, 705/1987 and 398/1988. The said decision/settlement is not to operate as a precedent.

16. The respondent (RW1) in his cross-examination admitted that the notifications/ letters issued by the Government of Himachal Pradesh are applicable to the Board. He also admitted that each and every petitioner had completed 240 days of work in a calendar year of his employment.

17. Since the petitioners were engaged in the years 1983, 1984 and 1985 as well as they had completed 240 days of work in all the years, they were required to be given the work-charge status w.e.f. 01.01.1994 as per the policy framed by the Government of Himachal Pradesh and in view of the trite laid down in the rulings cited by their Id. counsel. The regularization of the services of the petitioners was to take place on the basis of the availability of posts. To this limited extent, the action of the respondents is bad in the eyes of law. All the petitioners are required to be given the workcharge status w.e.f. 1st January, 1994. They are also entitled to the pecuniary benefits arising, if any, on the grant of work-charge status from that date.

18. This issue is decided accordingly.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is decided in favour of the petitioners and against the respondent.

RELIEF (ISSUE NO. 4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. It is held that the petitioners are entitled to the work-charge status w.e.f. 01.01.1994. They are also entitled to all the consequential benefits arising after having been brought on work-charge status w.e.f. 01.01.1994. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 57/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Bala Ram s/o Shri Bhagat Ram, r/o Village Jhadyar, P.O. Kango Ka Gehra, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Bala Ram s/o Sh. Bhagat Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 21.11.1998. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of

specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it

has been owned that the services of the petitioner were engaged as a daily rated beldar on 21.11.1998 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No. 2 :	Yes
Issue No. 3 :	No
Issue No .4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Bala Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the

petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 21.11.1998 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority list placed on the record, it can be gathered that the persons junior to the petitioner are serving the

respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lumpsum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 49/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Shri Baldev Raj s/o Shri Raghu Ram, r/o Village Dhagwani, P.O. Khauda (Tihra), Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Baldev Raj s/o Sh. Raghu Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 05.7.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The

Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authoritycum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from

the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 05.7.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my ld. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Baldev Raj stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 05.7.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 41/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Smt. Beena Devi w/o Shri Jai Lal, r/o Village Karyal, P.O. Sadhot, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Beena Devi w/o Sh. Jai Lal, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 01.2.2000. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been

regularized. The respondent has failed to adhere to the principle of 'last come first go'. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner's) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner's) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner's) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first

instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.2.2000 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
.. OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
.. OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
.. OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
.. OPR
5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Beena Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent. 12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 02.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.2.2000 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the

respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H. P.**

Ref No. : 58/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Smt. Bohari Devi w/o Shri Sukh Ram, r/o Village Chamyar, P.O. Tihra, Tehsil Sarkaghat,
Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Bohari Devi w/o Sh. Sukh Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 03.3.1999. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She

(petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner's) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner's) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner's) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The

petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 03.3.1999 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Bohari Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 03.3.1999 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 50/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Dalip Singh alias Pratap Singh s/o Shri Ghona Ram, R/o Village Putlifald, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Dalip Singh alias Pratap Singh s/o Sh. Ghona Ram by the Executive Engineer, H.P.P.W.D.(B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 08.2.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been

regularized. The respondent has failed to adhere to the principle of 'last come first go'. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first

instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 08.2.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
.. OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
.. OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
.. OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
.. OPR
5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Dalip Singh alias Pratap Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 08.2.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 53/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Dalip Singh s/o Shri Sunder Singh, r/o Village Upper Thana, P.O. Kangoka Gahra, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Dalip Singh s/o Sh. Sunder Singh by the Executive Engineer, H.P.P.W.D.(B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 24.6.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He

(petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner's) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner's) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The

petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 24.6.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Dalip Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 24.6.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 221/2010
Date of Institution : 04.08.2010
Date of Decision : 17.7.2012

Shri Devi Dass s/o Shri Jiunu Ram, r/o Village Shangara, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P.

....Petitioner

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. H.C. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Devi Dass s/o Shri Jiunu Ram by Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. August, 2008 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him engaged continuously by the above employer without following the principle of ‘Last Come First Go’ is legal and justified? If not, to what back wages, service benefits and relief the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent. He had completed 240 days of work in the years 1998, 1999, 2001 and 2002. His presence has however been shown for only 106, 208 and 293 days in the years 1999, 2001 and 2002, respectively. The record relating to his

working days for the years 2004 to 2008 has not been supplied by the respondent despite the complaint preferred by him under the Right to Information Act, 2005. Wrong and incomplete working days have been shown by the respondent. In the month of August, 2008, his services have been terminated by the respondent. Neither any notice was issued to him nor the retrenchment compensation was paid. The persons junior to him (petitioner) are still serving the respondent/department. The latter has removed him (petitioner) from service by adopting the pick and choose method so as to accommodate the juniors. Sufficient work is available with the respondent/department. He (petitioner) is entitled to the regularization of his services as per the norms fixed by the Govt. of Himachal Pradesh. In the year 2008, when he (petitioner) was about to complete 240 days of work, his services were disengaged by the respondent so that he is not entitled to the benefit of regularization. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 ('the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “ (i) that the services of the applicant/claimant may kindly be ordered to be reinstated as he was working at the time of retrenchment;
- (ii) that the back wages for intervening period may kindly be ordered to be paid to the applicant/claimant;
- (iii) that the seniority of the applicant/claimant may be ordered to be maintained by counting the period of absence from the date of joining;
- (iv) that the services of the applicant/claimant may also be ordered to be regularized in the light of the Judgment of the Hon'ble APEX COURT in case titled as “Mool Raj Upadhyay versus State of H.P.”;
- (iv) and/or any other relief to which the applicant/claimant is found entitled to under the facts and circumstances of case may also be granted in favour of the applicant/claimant and against the respondent/Department. It is, therefore, respectfully prayed that in view of the facts and circumstances submitted above, the applicant/claimant may kindly be granted reliefs as prayed for here-in-above, in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner. The petition has become infructuous as the petitioner stands re-engaged w.e.f. August, 2009 for the seasonal forestry works. The petitioner has misrepresented the facts. He has concealed the material facts from the Court. On merits, it has been owned that the services of the petitioner were engaged as a daily waged labourer in the month of July, 1998. However, it has been pleaded that the petitioner was engaged for seasonal forestry work subject to the availability of the funds. The petitioner used to work intermittently as per his sweet will. No fictional breaks were ever given to him at any point of time. The mandays chart of the petitioner is annexed as annexure R-1 to the reply. The services of the petitioner were not terminated as alleged. Therefore, there is no question of complying with the provisions of the Act. Forest Department is a Government organization for the welfare of the public at large. It cannot be termed as an industry within the meaning of the Act. The petitioner worked as a casual labourer. His services are/were coterminous with the closure of the season/work. He (respondent) has re-

engaged the petitioner w.e.f. August, 2009. The services of the petitioner are being utilized by him (respondent) with the start of the fresh season even after his temporary disengagement in the month of August, 2008 on account of the non-availability of the funds. No person junior to the petitioner has been engaged or retained in service at the end of every forestry season. Daily waged workers are called subject to the availability of work and funds on the principle of 'last come first go'. Keeping in view the availability of the funds, he (respondent) is not in a position to provide the employment to the petitioner or similarly situated workmen for the whole year. The petitioner did not complete 240 days of work in any calendar year except the year 2002 as claimed. No wrong/incorrect information has been provided. The petitioner is not entitled to regularization of his services as per the policy of the Government. The petitioner worked for only 91 days in the year 2008 as is apparent from the mandays chart. No provision of the Act has been infringed. The petitioner is not entitled to any relief. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that his services were engaged for seasonal forestry work.

5. Vide order dated 11.8.2011, below given issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. August, 2008 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Partly Yes Partly No
Issue No.2 :	Not pressed
Issue No.3 :	No
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Devi Dass stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that he does not remember that he had served the respondent/department in the month of August, 2009 as well. Self stated, the respondent used to engage his services intermittently. He denied that his services were engaged for the seasonal work only. The persons junior to him are serving the respondent. He owns

the agricultural land. He earns his livelihood by doing the work of agriculture. He denied that he is not attending his duties willingly.

9. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he denied that the mandays chart Ex. RW1/B is incorrect. He admitted that the services of the petitioner were engaged as a daily wager. Volunteered, the petitioner was engaged as per the availability of the work. He admitted that neither any notice was given nor the compensation was paid to the petitioner. He denied that the petitioner was removed from service in the year 2008, so that he does not complete 240 days of work.

10. Mark-A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/B.

11. Mark-B is the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2004.

12. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar in the month of July, 1998. The respondent in his reply has pleaded that the services of the petitioner were temporarily disengaged in the month of August, 2008 due to the nonavailability of the funds/budget. There is no documentary evidence on the record to show that the petitioner was engaged for seasonal forestry work as claimed by the respondent/department.

13. The mandays chart Ex. RW1/B unfolds that in the month of August, 2009 the petitioner worked for 28 days with the respondent/department. In the year 2010 he worked during the months of January, February and August, 2010 for total 57 days. There is no cogent and convincing evidence on the record to show that the mandays chart Ex. RW1/B produced by the respondent is wrong. The bald statement made by the petitioner (PW1) to the effect that he did not work with the respondent during the years 2009 and 2010 cannot be taken as a gospel truth. Since the petitioner was re-engaged after his termination in the month of August, 2008, the said controversy between the parties pales into insignificance.

14. The mandays chart Ex. RW1/B clarifies that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. August, 2008 as envisaged under Section 25-B of the Act. The provision of Section 25-F of the Act are thus not attracted in this case.

15. A glance of the seniority list Mark-B unfolds that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. The action of the respondent, thus, contravenes the provisions of Section 25-G of the Act. Needless to say that for deriving the benefit under the said Section, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination.

16. There is nothing on the record to show that after the disengagement of the petitioner in the month of August, 2008, new/fresh hands have been engaged by the respondent. Therefore, the provisions of Section 25-H of the Act are also not attracted in this case.

17. As already mentioned, after his disengagement in the month of August, 2008, the petitioner was re-engaged by the respondent in the years 2009 and 2010. It has come in the statement of the respondent (RW1) that the petitioner is not serving under him at present. This indicates that the petitioner is out of the service. In the references/claim petitions relating to the

similarly situated workmen, it was ordered by this Court that the petitioner be re-engaged, (if not re-employed) and he should be given the seniority and continuity in service from the date his juniors have been given the said benefits so as to safe guard the interests of the workmen. Such orders passed by this Court have already attained the finality. To avoid discrimination, the petitioner is also entitled to such relief(s).

18. This issue is decided accordingly.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. The petitioner (PW1) in his cross-examination admitted that he makes both the ends meet by doing the work of agriculture. It does not appeal to a reasonable mind that a young man like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

23. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

24. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The termination of the petitioner ordered in the month of August, 2008 is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith (if not already engaged). He shall be entitled to the seniority and continuity in service from the date the said benefits have been given to his juniors. The petitioner shall not be entitled to the back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref No. : 449/2009
Date of Institution : 28.8.2009
Date of Decision : 10.7.2012

Shri Dile Ram s/o Shri Om Chand, r/o Village Koot, P.O. Nandi, Tehsil Chachiot, District Mandi, H.P.

....Petitioner

Versus

The General Manager, Jaggar Gammon Joint Venture, Parvati Hydro Electric Project-III, Village Bihali, P.O. Lارج, Sub Tehsil Sainj, District Kullu, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Brij K. Sharma, Adv.
For the Respondent : Already exparte

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Dile Ram s/o Shri Om Chand w.e.f. 13.08.07 by the General Manager, Jaggar Gammon Joint Venture, Parvati Hydro Electric Project-III, Village Bihali, P.O. Lارج, District Kullu, H.P. without serving any notice and holding any enquiry without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is proper and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as set out in the petition/statement of claim reads thus:-

“1. That the claimant/petitioner was appointed as a driver by the respondent w.e.f. 23.10.2006 and he worked as such up-to 10.8.2007, when his services were terminated illegally by the respondent, without serving any notice as provided under Industrial Disputes Act and even no compensation has been given to him nor the salary for the leaves has been paid to him.

2. That the claimant-applicant has worked for a period of 10 months with the and was legitimately expecting that his services would not be terminated save in accordance with law.
3. That the action of the employer concerned is illegal, arbitrary, discriminatory and un-constitutional and against the settled position of law as well as Industrial Dispute Act, 1947.
4. That prior to his termination, the claimant/petitioner was getting Rs.8863/- as salary/wages including all the allowances and over time etc. Copy of Wage Slip is enclosed herewith for kind perusal.
5. That the claimant-petitioner also served a demand notice upon the respondent and despite of the conciliation held by the Labour-cum-Conciliation Officer, Kullu Zone, Kullu, H.P., the matter/Industrial Dispute could not be settled and as such the reference has been made to the Ld. Court, which is pending before the Ld. Court. It is, therefore, respectfully prayed that keeping in view the submissions made in this Statement of Claim, the reference/petition of the claimant/applicant may kindly be allowed and the respondent be directed to reengage the claimant/applicant on the post and place, where he was serving prior to his retrenchment. The respondents be further directed to consider the claimant/applicant in the employment with all consequential benefits like seniority and arrears of salary etc. for the intervening period be also directed to be maintained and paid to the claimant/applicant along with due leave salary and/or any other relief, to which the claimant/petitioner be found entitled to in view of the facts and circumstances of the present case be also awarded to the claimant/petitioner against the respondents along with the costs of the present reference/petition, in the interest of justice and justice be done”.

3. On notice, the respondent initially appeared, but later absented. Thus, he was proceeded against *ex parte* vide order dated 05.4.2011.

4. The petitioner Shri Dile Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the salary slip Ex. PW1/B for the month of May, 2007 allegedly issued by the respondent in his name.

5. It is not the case of the petitioner that any person junior to him has been retained in service by the respondent. It is also not his case that after the termination of his (petitioner's) services, new/fresh hands have been engaged by the respondent. The provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short) are not attracted in this case.

6. In the statement of claim and the affidavit Ex. PW1/A, the petitioner nowhere stated that he had continuously served for a period of 240 days in a block of 12 calendar months preceding the date of his termination i.e. 13.8.2007 as envisaged under Section 25-B of the Act. No mandays chart has been produced. For this reason, the petitioner cannot derive any benefits of the provisions contained under Section 25-F of the Act.

7. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner is neither illegal nor unjustified. He (petitioner) is not entitled to any relief.

8. That being so, the claim petition in hand being meritless fails. It is, accordingly dismissed. Parties to bear their own costs.

9. The reference is answered in the aforesaid terms.

10. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

11. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 2/2011

Date of Institution : 26.2.2011

Date of Decision : 16.7.2012

Shri Dinesh Kumar s/o Shri Dharam Singh, r/o VPO- Jalpehad, Tehsil Joginder Nagar, Distt. Mandi, H.P.

....Petitioner

Versus

The Environment Engineer, H.P. Pollution Control Board, Regional Office, Una, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Dinesh Kumar s/o Shri Dharam Singh, Driver by The Environment Engineer, H.P. Pollution Control Board, Una, H.P. w.e.f.03.12.2009 without serving charge sheet, without conducting enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the petition/statement of claim demand) is that he was working with the Himachal Pradesh State Pollution Control Board as a driver since 23.6.2006 on contractual/bill basis. He worked as such up-to December, 2009 in the Regional

Office of the Pollution Control Board at Jassur and Una. He was paid the monthly salary as per daily wages fixed by the Government of Himachal Pradesh from time to time. Rs.150/- per day were paid to him as per the rate fixed by the Govt. of Himachal Pradesh in the month of January, 2009. On 3rd December, 2009, he was verbally asked by the respondent to leave the job as some other person/driver had been appointed in his (petitioner's) place. He never remained absent from duty. He was discharging his duties honestly, efficiently and diligently to the entire satisfaction of his superiors. Not even a single complaint of any kind was received against him during his entire service period. His (petitioner's) services have been terminated by the respondent without assigning any reason and issuing the notice. He worked with the respondent continuously for 3½ years and is/was fully eligible for being employed as a driver. No salary in lieu of the notice period or retrenchment compensation have been paid to him by the respondent. On 05.12.2009, he (petitioner) met the Member Secretary of the Pollution Board and requested him not to terminate his services. He also requested the Member Secretary that he should be transferred to some other place as two posts of drivers are/were lying vacant at Chamba and Shimla. No heed to his request was paid by the Member Secretary. Thereafter he (petitioner) made a representation dated 08.12.2009 to the Chairman, Pollution Board regarding his retrenchment from service without any reason. Per letter dated 14.1.2010, the Member Secretary of the Pollution Board informed him that his representation has been rejected by the Chairman as he (petitioner) was afforded due opportunity to compete for the post of driver during the recruitment process held by the respondent/Board and he failed to qualify. No such opportunity was infact given to him (petitioner). He was in service of the respondent for more than 3 years. Therefore, the question of passing any test does not arise so as to continue in service. The respondent is correlating the two facts. He (petitioner) had also applied for the post of the driver in the Pollution Board as per the advertisement published on 01.3.2009. He appeared as a candidate in practical test of driving conducted by the respondent on 14.7.2009. The perusal of the advertisement published on 01.3.2009 indicates that the same was issued by the respondent for the posts of three drivers. Fresh/new appointments were to be made and it was open for all to compete. No condition of driving tests for the drivers was laid in the advertisement issued by the Pollution Board. He (petitioner) is ready and willing to serve as a driver at any place as desired by the respondent. Two more drivers were recruited by the respondent like him (petitioner). They too did not qualify the test but were retained in service by the respondent. New/fresh hands have also been engaged by the respondent. More than 20 employees are working with the respondent at various posts on contractual/bill basis. Only his services have been terminated without assigning any reason. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short). Demand notice dated 16.2.2010 was served upon the respondent by him. His request has been declined by the respondent per reply dated 17.5.2010.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(i) To reinstate the petitioner on the same post as driver.
- (ii) To pay the back wages as per rules and procedure.
- (iii) To continue the service of the petitioner and all allied benefits.
- (iv) To pay the retrenchment compensation and other dues. Any other relief(s) which this Hon'ble Court deems fit and proper may please be awarded to the petitioner”.

3. On notice, the respondent appeared. He filed detail reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the

effect that the claim petition is not maintainable in the present form. The petitioner has no cause of action. The petition is mala fide. It has been instituted just to harass him (respondent). The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petition is hit by the vice of delay and laches on the part of the petitioner. He is estopped from filing the petition by his act, conduct, and acquiescence. On merits, it has been pleaded that neither the petitioner was formally engaged/appointed by the State Board nor any appointment letter was issued in his name. The petitioner never worked on contract basis as claimed. He worked from 25.6.2006 to 25.11.2008. Thereafter, he was again given the work of the driver on bill basis w.e.f. 22.4.2009 to 02.12.2009. The Pollution Board was in the process of engaging the drivers on contract basis. Till the time the recruitment process was in progress, the petitioner was kept temporarily as a driver on bill basis. The petitioner was afforded due opportunity to compete for the post of the contractual driver during the recruitment process followed by the Board. He failed to qualify with the required grade. For these reasons no formal notice of termination of the services was required to be served upon the petitioner. He (petitioner) failed to qualify the driving test. He cannot be re-engaged. Being a bill based worker, the petitioner cannot be considered as an employee of the respondent/Board. The payment was made to the petitioner in lieu of the work done by him as a driver. Such payment cannot be treated as salary. No post of driver is lying vacant at present. In case such posts are created or filled in future, the same will be filled up as per the prescribed recruitment procedure. The petitioner is free to compete as the nature of the job is technical. The petitioner was doing the work of a driver as a stop gap arrangement before the post was formally advertised and filled up. Since the petitioner applied for the post of the driver and appeared in the test without any protest, he cannot question the recruitment process now. The petitioner cannot say that he was not given due opportunity to compete along with the other candidates. Other drivers like the petitioner were also employed as a stop gap arrangement. Neither they can be termed as the employees of the Pollution Board nor they are required to be retained in service. Fresh hands/drivers have been recruited by adopting the due procedure of recruitment. When the petitioner was taken as a driver on bill basis and stop gap arrangement, no competition was held. When the post was advertised he opted to participate in the competition/test and failed to qualify the same. No provision of the Act has been infringed. The demand raised by the petitioner is invalid. The petitioner is not entitled to the reinstatement etc. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent.

5. Per order dated 21.11.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 03.12.2009 is violative of the provisions of Sections 25-F, 25-G and H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the claim is not maintainable as alleged. If so to what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	No
Issue No.2 :	Yes
Issue No.3 :	Redundant
Relief. :	Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Dinesh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that when his services were engaged in the year 2006, no post of driver on regular or contract basis was available. He denied that he worked on bill basis from 25.6.2006 to 25.11.2008 and thereafter from 22.4.2009 to 02.12.2009. He admitted that in the year 2009, an advertisement was issued by the Pollution Board for appointing the drivers on contract basis. He also admitted that he had applied for the said post and Ex. R1 is the copy of the application submitted by him. It bears his signatures. He admitted that he was called by the Board for the test which he failed to qualify. Further, he admitted that the persons who qualified the driving test were given the appointment as drivers on contract basis by the Pollution Board. He admitted that during the period of his employment, the respondent gave him the payment on daily/bill basis. He denied that he was only a temporarily employee because of which he is not entitled to re-employment etc. He also denied that he has given a phoney statement.

10. Conversely, Sh. Brij Bhushan, Environmental Engineer, H.P. State Pollution Control Board, Una (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

11. In the cross-examination, he admitted that the petitioner worked intermittently as a driver from June, 2006 to 02.12.2009. He denied that the petitioner was appointed on contract basis and was being paid wages of Rs.150/- daily. He admitted that the advertisement was issued for appointment of the new/fresh drivers. No notice was served upon the petitioner before his disengagement. Even no retrenchment compensation was paid to the petitioner. He denied that the services of the petitioner have been dispensed with in a wrongful manner.

12. Ex. PW1/B is the copy of the letter/representation dated 07.12.2009 sent by the petitioner to the Chairperson of the Pollution Control Board.

13. Ex. PW1/C is the copy of the letter dated 14.1.2010 written by the Member Secretary of the Board to the petitioner. It depicts that the representation Ex. PW1/B made by the petitioner was rejected by the competent authority i.e. Chairperson of the Board on the ground that he (petitioner) was afforded due opportunity to compete for the post of the driver during the recruitment process followed by the Board and he (petitioner) failed to qualify with the required grade.

14. Ex. PW1/D is the copy of the demand notice dated 16.2.2010 served by the petitioner upon the Pollution Board.

15. Ex. PW1/E is the copy of the advertisement which was issued by the Pollution Control Board. As per this advertisement, applications were invited for filling up three posts of drivers purely on contract basis.

16. Ex. PW1/F is the copy of the letter dated 31.7.2006 written by the Member Secretary of the Pollution Control Board to the Environmental Engineer. It clarifies that the permission to employ Sh. Dinesh Kumar (petitioner) as a driver on bill basis w.e.f. 23.6.2006 was granted.

17. Ex. PW1/G is the copy of the reply dated 17.5.2010 submitted by the respondent before the Labour Inspector-cum-Conciliation Officer, Una pursuant to the demand notice served by the petitioner.

18. Ex. RW1/B is the copy of the application submitted by the petitioner for appointment as a driver on contract basis after the issuance of the advertisement dated 01.3.2009 (Ex. PW1/E). Ex. R1 corresponds to Ex. RW1/B.

19. Ex. RW1/C is the copy of the proceeding dated 14.7.2009 of the Committee which was constituted for the appointment of the drivers on contract basis after the issuance of the advertisement. The name of the petitioner appears at serial No.9. It reveals that the petitioner could not qualify the test with 'A' grade. Instead, he passed the test with 'B' grade.

20. Ex. RW1/D is the copy of the advertisement. The same corresponds to Ex. PW1/E.

21. It is the admitted case of the respondent that the petitioner served as a driver from 25.6.2006 to 25.11.2008 and 22.4.2009 to 02.12.2009. The assertion of the petitioner that his services were engaged on contractual basis stands falsified in view of the admissions made by him as PW1 coupled with the contents of the application Ex. R1 (it corresponds to Ex. RW1/B).

22. The petitioner (PW1) in his cross-examination admitted that the respondent used to pay him the daily on bill basis as and when he worked as a driver. There is no denial of the fact that the application Ex. R1 for the post of driver on contract basis was submitted by the petitioner. In this application also he mentioned that he is working in the Pollution Board on bill basis since 23.6.2006. Therefore, by no stretch of imagination it can be said that the appointment of the petitioner was contractual or on part time basis. He was simply a temporary employee of the Board driving the vehicle as a stop gap arrangement till the posts of the drivers on contractual basis are filled up. No relationship of employer and employee existed between the parties.

23. It is an admitted fact that after the issuance of the advertisement (Ex. PW1/E), the petitioner applied for appointment as a driver in the Pollution Control Board on contract basis. He also appeared in the competition/test which he failed to qualify with the required grade. The persons, who were meritorious than him (petitioner), were appointed as drivers by the Pollution Board. It is there in the reply of the respondent that presently no post of driver is lying vacant. As and when any post is created or advertised the petitioner is free to apply for the same and compete in the recruitment process.

24. The recruitment process adopted by the respondent to appoint the drivers on contractual basis cannot be said to be bad simply for the reason that the petitioner failed to qualify the same. Since the petitioner took the test, he is debarred from challenging its legality and validity.

25. After the appointment of the drivers on contractual basis the petitioner who was working on bill basis as a stop gap arrangement was not called by the respondent to drive the vehicle. It is the admitted case of the petitioner that he has been paid the wages on bill basis for the

days he drove the vehicle. As already mentioned, no relationship of employer and employee/workman existed between the parties. Therefore, it can be safely said that the provisions of the Act are not attracted in this case. The petition is not maintainable in the present form. The claim put forth by the petitioner is fallacious.

26. These issues are decided against the petitioner and in favour of the respondent.

ISSUE NO. 3

27. Taking into account my findings on issues No.1 and 2, this issue has become redundant. Discussing the same at length will serve no fruitful purpose. Rather, it will be like 'flogging a dead horse'.

28. The issue has been decided as such.

RELIEF (ISSUE NO. 4)

29. As a sequel to my findings on the above issues, the instant petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 96/2010
Date of Institution : 23.04.2010
Date of Decision : 20.7.2012

Shri Gitanand s/o Shri Khem Chand, r/o Village Nagdhar, P.O. Deori, Tehsil Sadar, Distt. Mandi, (H.P.)

....Petitioner

Versus

The Executive Engineer, HPPWD Chenav Valley Division, Udaipur, Distt. Lahul & Spiti, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Gitanand s/o Sh. Khem Chand, by The Executive Engineer, HPPWD Chenav Valley Division, Udaipur, Distt. Lahul & Spiti, H.P. w.e.f. 25.8.2008 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of arrear of back wages, seniority, past service benefits and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he is the holder of heavy hill driving license. He was qualified for being posted as a JCB Operator/Technician/Driver. In the month of September, 2005, his services were engaged as a JCB Operator/Technician/Driver by the respondent on daily wages. He worked as such up-to 25.8.2008. During the period of his employment the respondent used to give him the fictional breaks. He served the respondent/department for approximately three years completing 160 days of work in each calendar year (except the year 2008). The work used to be stopped as the area where he was posted is snow bound. On 25th August, 2008, his services were terminated by the respondent by a verbal order. He was not at fault. His (petitioner's) services were dispensed with by the respondent with a view to engage another non-Himachali JCB Operator/Driver in his place. His (petitioner's) work and conduct was above board during the period he served the respondent. No complaint was received against him. Before the termination of his services neither any notice was served upon him nor the retrenchment compensation was paid. He is unemployed from the date of his termination. The persons junior to him are working with the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. New/fresh hands have been engaged by the respondent after his termination. He was required to operate the JCB during odd hours day and night in the tribal area regularly for about three years. No over time allowance or extra remuneration was paid to him, though, he was assured to be suitably compensated. The mandays chart prepared by the respondent does not tally with the muster rolls issued in his name. He (petitioner) did not purchase any diesel unauthorizedly. Moreover, the amount of alleged unauthorized purchase of diesel has already been recovered/deducted from his wages. No inquiry was conducted into the allegations leveled against him (petitioner). He was not given an opportunity of being heard. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He made repeated requests to the respondent to re-engage his services, but in vain. Legal notice dated 11.11.2008 served upon the respondent under Section 80 CPC did not have the desired effect. His services were engaged for the work which is of permanent nature. He is entitled to the regularization of his services as per the policy framed by the State Government.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- I. That the Respondent/Employer may kindly be directed to re-engage/reinstate the petitioner in service from the date of his illegal termination retrospectively w.e.f. 26th Aug., 2008 with its consequential benefits.
- II. That the respondents may kindly be directed to assign seniority and regularize the services of the petitioner and also pay back wages for forced unemployment faced by the petitioner on the basis of illegal oral termination w.e.f. 26th August, 2008.

- III. That the entire original record of the case viz A.P.R/Attendance register/Muster Roll and log Book of JCB Machine and other related record maintained in the respondent Division be summoned and the respondent be burdened with cost of this forced application.
- IV. Any other order/direction which the authority deem just and proper in the interest of justice and fair play may kindly be passed/issued in favour of the petitioner”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. He (petitioner) has misrepresented the facts and has not approached the Court with clean hands. The petitioner has suppressed the material facts from the Court. He is estopped from filing the petition by his act and conduct. On merits, it stands admitted that the relationship of employer and employee exists between the parties. It has been owned that the services of the petitioner were engaged as a JCB Operator in the month of September, 2005. He worked intermittently up-to the month of July, 2008. The mandays chart of the petitioner is attached as Annexure R-I to the reply. No fictional breaks were ever given to the petitioner. The work was provided to him as per its availability keeping in view the seasonal requirement of the tribal area. From 01.7.2008 to 07.7.2008 JCB No.HP-34A-0104 on which the petitioner was deputed as an operator was sent by him (respondent) for necessary repairs to Shamshi (Kullu). The JCB returned for field operation on 08.7.2008. On his return from Shamshi, the petitioner presented a bill dated 08.7.2008 showing the purchase of 90 ltrs. diesel and 21 Kg. grease from M/s. Sood Petrol Pump, Kullu. The diesel allegedly purchased by the petitioner was not entered in the log book of the vehicle. Accordingly, vide notice dated 19.7.2008, an explanation was sought from the petitioner with regard to the unauthorized purchase of 90 ltrs. diesel. The petitioner did not respond to the notices sent to him by the Junior Engineer and the Assistant Engineer. Accordingly, w.e.f. 22.7.2008, the services of the petitioner were disengaged as a measure of punishment inflicted by way of disciplinary action. After the termination of the services of the petitioner, he (respondent) required an operator urgently to run the JCB machine. For this reason, Shri Gurmeet Singh was appointed on 20.7.2008. Shri Gurmeet Singh is continuing as a daily waged operator at present. No post is available to accommodate the petitioner on his re-engagement. Lahul & Spiti District remains snow bound and cut off from the rest of the world for almost six months in a year. The petitioner misconducted himself because of which the disciplinary action was taken against him. No provision of the Act has been violated. The services of the petitioner were not dispensed with to accommodate another man as alleged. Shri Gurmeet Singh was appointed due to the exigencies of work. The petitioner is gainfully employed as an agriculturist. He is debarred from claiming parity with the JCB Operators who have worked in continuity with him (respondent). The mandays chart has been rightly prepared. The price of 90 ltrs. diesel unauthorizedly purchased by the petitioner has been deducted from his salary. The receipt of the legal notice dated 11.11.2008 has not been disputed. The petitioner is not entitled to any relief. The claim petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been maintained that Shri Gurmeet Singh was appointed as a JCB Operator on 28.7.2008.

5. Vide order dated 25.7.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 25.8.2008 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so to what relief the petitioner is entitled to?

..OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Yes
 Issue No.3 : Redundant
 Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Gitanand stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he used to drive JCB No.HP-34A-0104. He also admitted that on 1st July, 2008, he had taken the above numbered JCB for repair to Shamshi (Kullu). On 8th July, 2008, he returned to Udaipur along with the JCB. He admitted that on the said date, he had taken a bill of 90 ltrs. diesel and 21 Kg. grease from M/s. Sood Petrol Pump, Kullu. He admitted that the log book of every vehicle is maintained which is filled in by the driver. He also admitted that the entry of 90 ltrs. diesel was not made by him in the log book, the photostat copy of which is Ex. D1. Self stated, he had forgotten to incorporate the entry of the diesel in the log book. He denied that the notices were issued to him by the SDO and JE, Udaipur calling upon him to explain his position. He does not know that Marks A and B are the copies of the notices. He denied that at the time of inquiry, it surfaced that the false bill of diesel was procured by him because of which bill Mark –C of the grease only was sanctioned. Further, he denied that after inquiry, the penalty was imposed him and his services were terminated by the respondent w.e.f. 22.7.2008. Volunteered, his services were dispensed with by the respondent as the latter wanted to appoint some other person. The price of 90 ltrs. of diesel has already been recovered from him. He admitted that Shri Gurmeet Singh operates, JCB presently. He refuted that he did not join the inquiry proceedings voluntarily despite the receipt of the notices by him. He admitted that Udaipur is tribal area which remains snow-clad for six months every year. Ex. D2 is the copy of the diesel bill which was produced by him. He makes both the ends meet by doing the agricultural work. He denied that he has instituted a phoney petition and is not entitled to the re-employment etc. Ex. D3 is the copy of the demand notice sent by him.

9. Conversely, Shri Duni Chand Yadav, Executive Engineer, Chenav Valley, Division, Udaipur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that the letter Ex. RW1/A (previously Mark-A) was written by the Assistant Engineer to the petitioner. No reply to it was received. Ex. RW1/B is the copy of the muster roll it was issued in the name of the petitioner from 1st July, 2008 to 31.7.2008. Ex. RW1/C is the mandays chart relating to the petitioner. Ex. RW1/D is the month/year wise detail of the working days in respect of the petitioner. He (petitioner) bought 90 ltrs. of diesel per receipt/bill Ex. D2 which was sold by him. Disciplinary action was initiated against the petitioner and his services were terminated. In the cross-examination, he admitted that the petitioner was appointed as a JCB

Operator in the month of July, 2005. The entry with regard to purchase of 90 ltrs. diesel was not made by the petitioner in the log book. The price of the diesel has been recovered from the salary of the petitioner. He admitted that Ex. RW1/A and Mark-B do not bear the signatures of the petitioner as a token of their receipt. Neither the petitioner was charge-sheeted nor the salary in lieu of the notice period was paid to him. He denied that no diesel was sold by the petitioner. He also denied that the services of the petitioner were disengaged by inventing a false story so as to accommodate Shri Gurmeet Singh. Shri Gurmeet Singh was appointed seven days after the termination of the petitioner. He denied that the services of the petitioner have been disengaged wrongly and illegally.

10. Ex. P1 is the copy of a letter written by the Principal Secretary (PW) to Government of Himachal Pradesh to the Engineer-in-Chief, HPPWD, Shimla and others.

11. No reference has been received from the appropriate Government regarding providing the fictional breaks, if any, to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

12. It is the admitted case of the parties that Udaipur in District Lahul & Spiti of Himachal Pradesh is tribal area. It is also an admitted fact that the services of the petitioner were engaged as a JCB Operator in the month of September, 2005. The version of the respondent is that the services of the petitioner were terminated as a measure of punishment since he sold 90 ltrs. diesel purchased per receipt Ex. D2 to someone and misappropriated its amount. The respondent has also maintained that the entry with regard to the diesel was not made by the petitioner in the log book of the JCB. Ex. D1 is the copy of the log book.

13. From the evidence available on the record including the statement made by the petitioner (PW1), it can be gathered that the services of the petitioner were disengaged by the respondent w.e.f. 22.7.2008. No termination order was passed by the respondent against the petitioner on and w.e.f. 25.8.2008 as mentioned in the reference received from the appropriate Government. In the proof affidavit Ex. PW1/A the petitioner has categorically stated that Shri Gurmeet Singh was appointed as JCB Operator in his place by the respondent w.e.f. 28.7.2008. This fact finds support from Ex. D1 viz. the copy of the log book.

14. As already mentioned no order was passed by the respondent against the petitioner terminating his services on or w.e.f. 25.8.2008 (as detailed in the reference). The petitioner (PW1) specifically stated that he served the respondent/department only up-to 21.7.2008. Since no termination order as mentioned in the reference and claim petition was pronounced by the respondent, it cannot be said that the order disengaging the services of the petitioner w.e.f. 25th August, 2008 is wrong and illegal. The story put forth by the petitioner is self contradictory. He is, thus, not entitled to any relief.

15. This issue is decided against the petitioner and in favour of the respondent.

ISSUE NO. 2

16. Taking into account my findings on issue No.1, it is held that the claim petition/reference is not maintainable.

17. This issue is also decided against the petitioner.

ISSUE NO. 3

18. Taking into account my findings on issues No.1 and 2, this issue has become redundant. Discussing the same at length will serve no fruitful purpose. Rather, it will be like 'flogging a dead horse'.

19. The issue is decided as such.

RELIEF (ISSUE NO. 4)

20. As a sequel to my findings on the various issues, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 222/2010
Date of Institution : 04.8.2010
Date of Decision : 17.7.2012

Smt. Goda Devi w/o Shri Balak Ram, r/o Village Salah, P.O. Bhojpur, Tehsil Sunder Nagar, District Mandi, H.P.

....Petitioner

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Deepak Azad, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Smt. Goda Devi w/o Shri Balak Ram by Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. August, 2006 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a Sweeper in the month of October, 2004 on part time basis. She was required to do the work of sweeping in Range Forest Office, Suket. She worked under the supervision of the Range Forest Officer, Suket continuously up-to the month of August, 2006. She was discharging her duties honestly and efficiently. In the month of September, 2006, her services were verbally terminated by the respondent by giving an assurance that she will be called back after a few days. Thereafter, she approached the respondent a number of times to re-engage her, but in vain. The work for which her services were engaged is of permanent nature. Budget is also available with the respondent to re-employ her. Her services have been dispensed with arbitrarily, illegally and without serving any notice as required under the Industrial Disputes Act, 1947 ('the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

“the respondent be directed to re-engage the claimant/petitioner on the post and place, where she was serving prior to her termination. The respondents be further directed to consider the claimant/petitioner in the employment with all consequential benefits like seniority and arrears of salary etc. for the intervening period be also directed to be maintained and paid to the claimant/petitioner and/or any other relief, to which the claimant/petitioner be found entitled to in view of the facts and circumstances of the present case be also awarded to the claimant/petitioner against the respondent along with the costs of the present reference/petition, in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been pleaded that the petitioner has worked on bill basis for sweeping work in the compound of Range Office, Suket w.e.f. October, 2004 to July, 2006. During the said period, the post of regular sweeper was lying vacant. The petitioner was never appointed as a part time worker/sweeper in the department by any competent authority. The sweeper and other workers of the forest department work under the supervision of Beat Incharge concerned. The Beat Incharge prepares the bills of the workers according to their progress. No appointment letter has been issued in the name of the petitioner. The competent authority has not given any offer/permission to engage the part time worker i.e. the petitioner. In the month of September, 2006, Shri Duni Chand was posted as regular sweeper at Range Office, Suket. Thereafter the sweeping work is being performed by him. The petitioner was never appointed on part time basis as alleged. She worked merely on bill basis under the supervision of the concerned Beat Incharge. No notice was required to be served upon the petitioner. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that she worked on bill basis. Infact she worked as a sweeper on part time basis as is evident from the details of the working days. 5. Vide order dated 11.8.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. August, 2006 is violative of the provisions of Sections 25-F and 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
3. Relief.
5. I have heard the ld. counsel/AR for the parties and have gone through the case file.
6. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Yes
 Relief. : Reference/claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

7. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

8. The petitioner Smt. Goda Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B. In the cross-examination, she stated that her services were engaged as a Safai Karamchari on 10.1.2004. She admitted that she was appointed for four hours daily. Self stated, the respondent used to take the work from her for the whole day. A complaint in this regard was made by her to the Labour Inspector. She cannot produce any record pertaining to such complaint. She admitted that she worked up-to the month of July, 2006. She feigned ignorance about the fact that her services were engaged as a stop gap arrangement. She admitted that in the month of September, 2006, Shri Duni Chand joined as a regular Safai Karamchari on his transfer to the Range Office. She also admitted that her services were disengaged after the joining of Sh. Duni Chand. She does not know that the post of a Safai Karamchari cannot be filled without holding an interview. She admitted that she was not appointed on the muster roll. The payment used to be made to her on the basis of the voucher(s). She denied that no work is available for her with the respondent/department. She makes both the ends meet by doing the days' drudgery.

9. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he deposed that from the year 2006 onwards regular Safai Karamchari is working in the office. The petitioner was not called after the joining of the regular Safai Karamchari. He admitted that the mandays chart Ex. R1 has been issued by the office. He denied that the persons junior to the petitioner are serving under him and he has given a phoney statement.

10. From the admissions made by the petitioner (PW1) coupled with the mandays chart Ex. PW1/B (which corresponds to Exts. R1 and RW1/B), it becomes clear that the services of the petitioner were engaged as a Safai Karamchari due to the fact that the post of the regular sweeper was lying vacant. The petitioner used to work for four hours daily on bill basis. She (PW1) admitted that no muster roll was issued in her name. The payment was made to her on the basis of

the vouchers. This clearly indicates that the services of the petitioner were engaged for doing sweeping work four hours daily in the office of the respondent against payment as a stop gap arrangement.

11. The evidence available on the record clarifies that the regular Safai Karamchari Sh. Duni Chand joined the office of the respondent on his transfer in the month of September, 2006. After that, the petitioner was not called by the respondent for doing the work of cleanliness due to the fact that the regular Safai Karamchari (Sh. Duni Chand) is doing the said work.

12. In view of the evidence adduced by the parties, to my mind the relationship of workman/employee and employer does not exist between them. No post of Safai Karamchari is available in the office of the respondent after the appointment of the regular sweeper Sh. Duni Chand. The claim put forth by the petitioner is fallacious. She is not entitled to any relief. The petition is not maintainable in the present form. No provision of the Act has been violated by the respondent.

13. These issues are decided against the petitioner and in favour of her opponent.

RELIEF (ISSUE NO. 3)

14. As a sequel to my findings on the issues No. 1 and 2, the instant claim petition/reference being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.
(CAMP AT UNA)**

Ref No. : 7/2010

Date of Institution : 16.1.2010

Date of Decision : 02.7.2012

Shri Gurcharan Singh s/o Shri Sadhu Ram, r/o Village Bathu, Tehsil Haroli, District Una, H.P. (through his legal heirs)

1. Smt. Santosh Kumari (Widow)

2. Sh. Rajeev Kumar (Son)
3. Smt. Anjana Kumari (Daughter)
4. Miss Manjnana Kumari (Daughter)
5. Mr. Sanjeev Kumar (Son) all r/o Village & P.O. Bathu, Tehsil Haroli, District Una, H.P. Petitioner(s)

Versus

Executive Engineer, I.&P.H. Division Una, District Una, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Late Shri Gurcharan Singh s/o Shri Sadhu Ram (Ex-Pump Operator) by the Executive Engineer, I. & P.H. Division Una, District Una, H.P. after completion of 240 days continuous service, verbally, without any enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief viz a viz back wages, past service benefits and amount of compensation etc. the dependent of deceased workman is entitled from the employer?”

2. The case of the petitioner as set out in the petition/statement of claim read thus:-

- “1. That the deceased Late Sh. Gurcharan Singh started his career as daily waged worker with respondent in the year 1974. It is submitted, that at the time the respondent/department I&PH was combined with B&R department and these two departments were separated in 1977. Till 1977, the applicant served the respondents under the combined cadre, but on bifurcation, the services of the applicant were transferred to present respondent. The applicant continued serving the respondent as Supervisor as he was initially engaged as Supervisor.
2. That in the year 1989, the applicant was appointed as pump operator as village Bathu on the basis of his seniority and efficiency. The applicant was getting Rs.37/- per day. It is stated here that the applicant was entitled for paid holidays. The work and conduct of the applicant was to the entire satisfaction of his superiors and nothing adverse has ever been communicated to him at any point of time. Rather his work was always appreciated by his superiors.
3. That unfortunately, the applicant was falsely implicated in a criminal case under Section 376/324 IPC vide FIR No. 220 of 1990 on the police station, Una. The applicant was arrested by the police on 03.08.1990 and was bailed out on 17.08.1990. Be it submitted here that the alleged case was the result of party faction in the village and the applicant was falsely implicated in the case, whereas the applicant was innocent and has not committed such offence.

4. That the applicant was in continuous service of the respondent on muster roll basis since the day of his engagement i.e. 1974. The applicant reported for his duty on 18.08.1990, but the applicant was not allowed to work on daily wage by the respondent. The applicant requested to the respondent that he has been falsely implicated in the case and has not done any thing as alleged and if he is thrown out of the job, not only he, but his three minor children (at that time) and wife would be forced to be starve. The respondent, however, showed his disinclination and illegally denied the just claim of the applicant inasmuch as that he was not re-engaged on his job. The respondent further assured the applicant that till the decision of the case against him, he will not be allowed to join his duty and in case he is acquitted, he will get all the benefits as a result thereof. Though the applicant was not satisfied with the assurance of the applicant, yet he had no alternative that to accept the same.
5. That applicant has been honorably acquitted by the Ld. Session Judge, Una of the offence under section 376 IPC but has wrongly and illegally been convicted under section 324 IPC and sentenced to pay fine of Rs.1500/-. It is worthwhile to submit here that the applicant has filed an appeal before the Honorable High Court of Himachal Pradesh against his conviction and the said appeal was registered vide Criminal Appeal No. 292/1992 and the same was admitted by the Hon'ble High Court on 27.11.1992 and the operation of sentenced has been stayed. The judgment of the Ld. Session Judge, Una would be referred at the time of hearing or would be filed if the Hon'ble Tribunal directs so.
6. That after the acquittal of applicant on 12.10.1992 the applicant represented to the respondent that since he has been acquitted of the charge under section 376 IPC as such he is entitled for re-engagement and requested accordingly.
7. That it appears that respondent has sought the opinion of the District Attorney, Una on the matter of his re-engagement with letter dated 22.02.1992 and the Ld. District Attorney has opined that since the applicant has been convicted on criminal charges, such he would not be allowed to join his duties. The Ld. District Attorney further opined that the State of Himachal Pradesh has also sent the proposal for filing an appeal against the acquittal under section 376 IPC.
8. That on receipt of this opinion the respondent has refused to re-engage the applicant as Pump Operator. Hence, the applicant craves the king indulgence of this Hon'ble Tribunal in the matter and assail the impugned action of the respondent declining him to re-engage on the following grounds amongst others.
9. That the impugned action of the respondent is illegal, arbitrary, unconstitutional and violative to the provisions of Industrial Disputes Act, 1947 inasmuch as the struck of the name of the applicant from the muster roll amounts to retrenchment and such action is violative under Section 25-F of the Industrial Disputes Act, 1947 where as the Late Sh. Gurcharan Singh had been completed more than 240 days in each calendar years as well as last twelve calendar preceding months from the date of his alleged termination dated 17.08.1990.

10. That before terminating his service by the respondent no show cause notice, charge-sheet has served to him against his alleged misconduct neither the one month pay in lieu of notice period and retrenchment compensation under section 25-F paid to him at the time of his illegal termination and without complying the same every termination is null, void and abinitio and respondent has not violated the section 25-F but also violated the section 25-G and 25-H of the Industrial Disputes Act, 1947 whereas the person junior to him as Pump Operator were retained in service and after termination of his services new pump operator have been appointed. The relevant record in this regard i.e. seniority list of pump operator under the possession of respondent and the respondent be submit the same along with reply of claim petition and also submit the seniority list of regular pump operators up to date.
11. That it is specifically stated here that after termination the services of applicant deceased Late Sh. Gurcharan Singh he has been preferred the O.A. No.1701 of 1992 before the Hon'ble Administrative Tribunal H.P. Shimla and the same has been dismissed on the ground of jurisdiction and thereafter the applicant has raised the industrial dispute against the respondent.
12. That as per the policy of State Government the services of daily wager workmen have been appointed on work-charge status from time to time i.e. in the year 1986, 1990 and thereafter 01.01.1994 on the judgment of Mool Raj Upadhaya, hence, the applicant has been fulfilled the criteria as fixed by state government from time to time and he was also entitled for his work charge status as pump operator in the pay scale of Rs.1000-1800/- w.e.f. 01.01.1986 and revised Rs.3120-5160/- w.e.f. 01.01.1996 to onwards till the date of his actual employment in the department as per his date of birth attaining the age of 58 years and he is also entitled all the back arrear from the date of his junior pump operator appointed to till the date of his employment with all consequential service benefits throughout.
13. That it is submitted here that during the pendency of this case the applicant has been expired on 29.01.2008.
14. That legal heir and dependent of deceased Late Sh. Gurcharan Singh widow Smt. Santosh Kumari is entitled all the pecuniary benefits of the deceased and also entitled pensionary benefits from the date of her husband death i.e. 29.01.2008 to onwards.
15. That it is specifically stated here that the deceased Late Sh. Gurcharan Singh was not gainfully employed anywhere from the date of his illegal termination i.e. 17.08.1990 to till the date of his death. It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.
 - i. The illegal termination order dated 17.08.1990 may kindly be quashed and set aside and directed to respondent to reinstate the services of deceased Late Sh. Gurcharan Singh with full back wages, seniority, in continuity of service with all consequential service benefits throughout.

- ii. The services of deceased Late Sh. Gurcharan Singh may kindly be consider for work-charge status as pump operator from the date of his junior have been granted work-charge status in the pay scale of cadre post and revised scale from time to time and also pay the back arrear to the widow of deceased.
- iii. The retirement/terminal benefits of deceased also be granted in the favour of widow as like gratuity, leave encashment and also granted pensionary benefits in her favour from the date of death of deceased under the CCS pension rule 1972 in the interest of justice and justice be done.
- iv. Any other relief deemed fit may kindly be granted in the favour of deceased widow”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed in any manner. The petitioner is estopped from filing the petition by his act and conduct. He has suppressed the material facts from this Court as well as the Hon'ble Himachal Pradesh State Administrative Tribunal. The petition is bad on account of delay and laches on the part of the petitioner. On merits, paras 1 to 15 of the reply read thus:-

- “1. That the contents of para No.1 of the claim petition are wrong and denied. As per the record of HP. PWD Sub Division Haroli, by whom late Sh. Gurcharan Singh was initially engaged as daily waged workman the Gurcharan Singh had remained in the services of HP. PWD Sub Division Haroli w.e.f. April, 1979 up to 1982. The detailed mandays chart w.e.f. April, 1979 to 1982 is annexed herewith as Annexure R-1. Thereafter the Gurcharan Singh remained in the services of the respondent and worked under the control and suppression of Assistant Engineer, Irrigation and Public Health Sub Division Haroli w.e.f. 2/83 to 7/90 as a daily paid workman in different Capacity/categories. The detailed mandays chart w.e.f. 2/83 to 7/90 is annexed herewith as Annexure R-2.
2. That the contents of para No.2 of the claim petition are admitted to the extent that w.e.f. 01.12.1988 the category of the deceased Gurcharan Singh was changed to that of Pump Operator from Beldar.
3. That the contents of para No.3 of the claim petition as for as they pertain to the registration No. FIR No. 220/1990 and U/S 376, 324 IPC and the custody of the deceased Gurcharan Singh w.e.f. 03.08.1990 to 17.08.1990 are admitted. Rests of the contents of this para are denied for want of knowledge.
4. That the contents of para No.4 of the claim petition are wrong and hence denied. It is wrong to allege that the deceased Gurcharan Singh was engaged w.e.f. 1974. Infact he was initially engaged in the year 1979, the detail mandays chart has already been annexed as Annexure R-1 & R-2. It is further submitted that since the deceased Gurcharan Singh was involved in a case of moral turpitude and with his arrest he remained on unauthorized absence, there came a break in service in his engagement with the

respondent. Moreover a person whose is not suitable to be appointed against a civil regular post he cannot be allowed to be engaged or reengaged, as a daily waged worker also.

5. The contents of para No.5 of the claim petition are wrong and hence denied. It is however submitted that in pursuance of acquittal of Gurcharan Singh U/S 376 IPC by the Hon'ble District and Session Judge Una the State of H.P. preferred criminal appeal No.45/1993, State of H.P. versus Gurcharan Singh against the said acquittal before the Hon'ble High Court. It would not be out of place to mention here that against his conviction U/S 324 IPC the deceased Gurcharan Singh Hon'ble H.P. High Court, against the said No.292/92 Gurcharan Singh V/S State of H.P., before the Hon'ble High Court. Both the above appeals were decided by a single order by the Hon'ble High Court order dated October 9, 1998 and the judgment of the Ld. District and Session Judge was upheld. The photo copy of judgment of the Hon'ble H.P. High Court Shimla is be annexed here as with Annexure R-3.
6. That the contents of para No.6 of the claim petition are admitted to the extent that, infact it is on 20.10.1992 instead of 12.10.1992 the deceased Gurcharan Singh made a representation to Assistant Engineer, IPH Sub Division Haroli.
7. That the contents of para No.7 of the claim petition are admitted. The Ld. District Attorney, Una has tendered the opinion on the basis of the merits of the case, as well as, the matter was sub-judice before the Hon'ble H.P. High Court Shimla. This is evident from the judgment dated 09.10.1998 which has already been annexed as Annexure R-3.
8. That the contents of para No.8 of the claim petition are wrong and hence denied. The deceased Gurcharan Singh was not only allowed to be re-engaged on the basis of open by Ld. District Attorney, Una. But also due to the fact that state of H.P. had preferred a criminal appeal No.43/1993 against the acquittal of the deceased for the commissioning of offence U/S 376 IPC. The deceased Gurcharan Singh has suppressed the fact of filing of Criminal appeal, as stated above from the Hon'ble H.P. Administrative Tribunal Shimla, as well as from the Hon'ble Court. It is further submitted that after the pronouncement of judgment dated 09.10.1998 by the Hon'ble High Court, the Late Sh. Gurcharan Singh made a representation dated 27.03.1999 to the respondent for his re-engagement which is annexed as Annexure R-4. The same was considered and rejected by the respondent. The decision of the representation was duly communicated to the deceased Gurcharan Singh vide this office letter No. 2544-45 dated 30.05.2000 which is being placed as Annexure R-5.
9. That the contents of para No.9 of the claim petition are wrong and hence denied. As discussed in para supra, due to his arrest by the Police in FIR No.220/90 U/S 376, 324 IPC, the deceased Gurcharan Singh has remained on unauthorized absence which shall amount to break in service, as such the deceased Gurcharan Singh was not entitled for the protection U/S 25F of the Industrial Disputes Act, 1947.
10. That the contents of para No.10 of the claim petition are also wrong and hence denied. As discussed in para no.9 above the disengagement of

deceased Gurcharan Singh was due to his own act and conduct, which shall amount to unauthorized absence and break in service. Thus there is no question of complying with the provisions of Sections 25F, 25G and 25H of Industrial Disputes Act, 1947.

11. That the contents of para No.11 of the claim petition are admitted to the extent that O.A. No.1701/1992 and its dismissal on ground of jurisdiction. However, after the dismissals of the O.A. vide order dated 05.05.2005, the deceased Gurcharan Singh had preferred the present Industrial Dispute at a very belated stage by preferring the demand notice dated 11.06.2007. The copy of the judgment of Hon'ble H.P. Administrative Tribunal Shimla is being placed as annexed Annexure R-6 and the copy of the demand notice dated 11.06.2007 are being placed as Annexure R-7. As much as, the whole of the dispute raised by the petitioner as well as deceased Gurcharan Singh is hopelessly delayed and time barred, as vide Annexure R-5, dated 30.05.2000, the case of the deceased Gurcharan Singh for his re-engagement was considered and rejected and the same was communicated to him.
12. That the contents of para No.12 of the claim petition are wrong and hence denied. A detailed reply as already been given in paras above. It is however submitted that due to his unauthorized absence, break in service has accrued in his continuous service with the respondent. As such the deceased Gurcharan Singh is not entitled for his retrospective regularization and other claims preferred by the petitioner in this para, as being his legal heirs.
13. The date of death of deceased Gurcharan Singh, as being 29.01.2008 is not disputed.
14. That the contents of para No.14 of the claim petition are wrong and hence denied. The deceased Gurcharan Singh had left the following legal heirs, beside his widow Santosh Kumari i.e. Rajiv Kumar, Sanjeev Kumar sons, Anjana Kumari, Manjana Kumari, daughters. Copy of the legal heir certificate is being are annexed as Annexure R-8.
15. That the contents of para No.15 of the claim petition are wrong and hence denied. The Late Sh. Gurcharan Singh was gainfully employed as whole time agriculturist for his livelihood, after he was released on bail on dated 17.08.1990, being a holder of big landed estate. (The revenue record is annexed as Annexure R-9)" In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he was initially appointed in the year 1979. The mandays chart annexure R-1 is wrong. His (petitioner's) services were terminated illegally without holding any domestic inquiry. He did not willfully absent from duty. The absence w.e.f. 03.8.1990 to 17.8.1990 was due to the involvement in a criminal case. Therefore, there is no question of break in his service.

5. Vide order dated 01.12.2010, following issues were struck by my Id. Predecessor:

1. Whether the termination of late Sh. Gurcharan Singh w.e.f. 03.8.1990 is violative of the provisions of Section 25-F as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as alleged. If so, its effect thereto?
..OPR
3. Whether the petitioner is estopped from filing a present claim as alleged. If so, to what effect thereto.
..OPR
4. Whether the reference is hit by the vice of delay and laches as alleged. If so, its effect thereto?
..OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : Not pressed
 Issue No.4 : No
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. Smt. Santosh Kumari, one of the heirs/wife of late Sh. Gurcharan Singh (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

9. In the cross-examination, she admitted that her husband breathed his last on 29.1.2008. She does not know that her husband (deceased petitioner) had joined the service in the month of April, 1979. She admitted that late Shri Gurcharan Singh served up-to the month of July, 1990. An FIR bearing No. 220/1990 under Section 376 and 324 IPC was registered against her husband and, thereafter, Sh. Gurcharan Singh remained in custody of the police from 03.8.1990 to 17.8.1990. She admitted that her husband was convicted by the Court. Self stated, he was acquitted for the commission of an offence punishable under Section 376 of the Indian Penal Code. She feigned ignorance about the fact that her husband had served the sentence awarded to him under Section 324 of the Indian Penal Code. She is not aware of the fact that break in service of late Sh. Gurcharan Singh cropped up due to his own fault. They own the agricultural land. She does not know that the persons junior to her husband served the respondent/department regularly without any complaint or charge-sheet against them.

10. Conversely, Sh. M.K. Hira, Executive Engineer, I&PH Division No.1, Una (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

11. In the cross-examination, he admitted that neither any notice was served upon the deceased petitioner nor an inquiry was conducted against him. He admitted that if late Sh. Gurcharan Singh would not have been involved in a criminal case, his services might have been regularized. Volunteered, Rs.4708/- were paid as gratuity to the petitioner.

12. Ex. PW1/B is the copy of the judgment dated October 9, 1998 pronounced by the Hon'ble High Court of Himachal Pradesh in Criminal Appeals No.45/1993 and 292/1992. Its perusal discloses that the appeals preferred by the convict Sh. Gurcharan Singh and the State of Himachal Pradesh were dismissed by the Hon'ble Court.

13. Ex. PW1/C is the copy of the judgment dated 12.10.1992 rendered by the Id. Sessions Judge, Una in Sessions Trial No.9/1991 titled as State vs. Gurcharan Singh. It clarifies that Sh. Gurcharan Singh (accused) was acquitted for the commission of an offence punishable under Section 376 of the Indian Penal Code. He was, however, convicted for the commission of an offence punishable under Section 324 of the Indian Penal Code and directed to pay Rs.1500/- as fine. It was also ordered that in case of default in payment of fine, he shall undergo simple imprisonment for three months.

14. Ex. RW1/B is the mandays chart in respect of the deceased petitioner which has been issued by the Assistant Engineer, HPPWD Sub Division, Haroli, District Una. The version of the respondent is that the services of the petitioner were initially engaged by the HPPWD.

15. Ex. RW1/C is the mandays chart relating to the petitioner. The same has been issued by the Assistant Engineer, I&PH Sub Division, Haroli.

16. Ex. RW1/D is the copy of the letter dated 30.5.2000 written by the Executive Engineer, I&PH Division, Una to the Assistant Engineer, I&PH Sub Division, Haroli informing him that the case of the petitioner/daily waged pump operator for re-engagement cannot be considered.

17. Mark-A is the copy of the judgment dated 09.10.1998 passed by the Hon'ble High Court of Himachal Pradesh. It corresponds to Ex. PW1/B.

18. The version of the petitioner is that his services were initially engaged in the year 1974. While denying the said fact the respondent has pleaded that the petitioner was appointed for the first time in the month of April, 1979. The said assertion of the respondent appears to be true in view of the mandays chart Ex. RW1/B. Smt. Santosh Kumari (PW1) in her crossexamination stated that she does not know that her deceased husband had joined the service only in the month of April, 1979. There is nothing on the record to show that the mandays charts Exts. RW1/B and C produced by the respondent are incorrect.

19. It is the admitted case of the respondent that Sh. Gurcharan Singh (deceased petitioner) served the department up-to the year 1990. Admittedly, FIR No.220/1990 dated 03.8.1990 was registered against the petitioner in Police Station, Una for the commission of the offences punishable under Section 376, 307, 324 and 323 of the Indian Penal Code. Sh. Gurcharan Singh was tried by the Id. Sessions Judge, Una for the commission of the aforesaid offence. Per judgment dated 12.10.1992 the copy of which is Ex. PW1/C, the Id. Sessions Judge convicted Sh. Gurcharan Singh for the commission of an offence punishable under Section 324 of the Indian Penal Code only. He was acquitted for the commission of rest of the offences including the offence of rape.

20. Against the judgment dated 12.10.1992 pronounced by the Ld. Sessions Judge, Una, the accused/convict Sh. Gurcharan Singh (petitioner) and the State of Himachal Pradesh preferred criminal appeals No.292/92 and 45/1993 before the Hon'ble High Court of Himachal Pradesh. Both the appeals were dismissed by the Hon'ble High Court per judgment dated October 9, 1998, the copy of which is Ex. PW1/B. Sh. Gurcharan Singh expired on 29.1.2008 as per the version of PW1.

21. He (petitioner) was not held guilty by the Court for the commission of an offence of moral turpitude.

22. There is no denial of the fact that late Sh. Gurcharan Singh was arrested by the police pursuant to above numbered FIR registered against him. It has come in the statement of PW1 that he remained in the custody of police from 03.8.1990 to 17.8.1990. The evidence available on the record clarifies that the petitioner could not attend to his duties as he was arrested by the police. Admittedly, after his acquittal under Section 376 of the Indian Penal Code by the Id. Sessions Judge, Una, the petitioner made various representations to the respondent to re-engage his services, but in vain. The respondent did not accede to the request of the petitioner for re-employment on the pretext that the appeals are pending before the Hon'ble High Court of Himachal Pradesh.

23. The absence from duties of the petitioner was neither willful nor intentional. As already mentioned, it was due to the reason that he was arrested by the police after the registration of an FIR against him.

24. The mandays chart Ex. RW1/C unfolds that the petitioner had completed 240 days of work in a block of 12 calendar months preceding the date of his arrest/termination i.e. 03.8.1990. From the statement made by the respondent (RW1), it becomes clear that no notice was served upon the petitioner before his retrenchment. Even no inquiry was conducted against him.

25. Section 25-F of the Act postulates as under:-

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

26. There is not even an iota of evidence on the record to show that before the termination of the services of the petitioner the mandatory provisions of Section 25-F of the Act were complied with by the respondent. Therefore, I have no hesitation to conclude that the termination of late Sh. Gurcharan Singh by the respondent is illegal and unjustified.

27. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

28. Not pressed.

ISSUE NO. 3

29. Not pressed.

ISSUE NO. 4

30. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

31. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

32. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 5)

33. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner (late Sh. Gurcharan Singh) is set aside and quashed. Since the petitioner has already died, no orders regarding his reinstatement in service are being passed. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 03.8.1990 except back wages. The respondent is directed to examine the case of the petitioner(s)/legal heirs of the deceased and whatever benefits are found due and payable to them in terms of this Award, the same shall be made available to them within a period of three months from the date of receipt of a copy of this Award. The amount payable, if any, to the legal heirs of the deceased shall be paid to them in equal shares. Parties to bear their own costs.

34. The reference is answered in the aforesaid terms.

35. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

36. File after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 37/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Shri Hukam Chand s/o Shri Chhitru Ram, r/o Village Hiun, P.O. Giun, Tehsil Sarkaghat,
Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Hukam Chand s/o Sh. Chhitru Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 01.01.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The

Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.1.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
.. OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Hukam Chand stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died

in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.1.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 40/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Shri Jagat Ram s/o Shri Roshan Lal, r/o Village Bhalu, P.O. Sandhole, Tehsil Sarkaghat,
Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Jagat Ram s/o Sh. Roshan Lal, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 01.7.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The

Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.7.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
.. OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Jagat Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans

Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.7.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in theyear 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 51/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Smt. Kaulan Devi alias Kalan Devi w/o Shri Roshan Lal, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Kaulan Devi alias Kalan Devi w/o Sh. Roshan Lal, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 01.1.1999. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was

filed before the Hon'ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner's) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.1.1999 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?

..OPP

2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?

..OPP

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?

..OPR

4. Whether the reference is not maintainable as alleged. If so, to what effect?

.. OPR

5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed.

Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Kaulan Devi alias Kalan Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also

admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.1.1999 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also

been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 63/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Kripa Ram s/o Shri Bhagat Ram, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD. (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Kripa Ram s/o Sh. Bhagat Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 13.1.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the

notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 13.1.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?

..OPP

2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?

..OPP

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?

..OPR

4. Whether the reference is not maintainable as alleged. If so, to what effect?

.. OPR

5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed.

Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Kripa Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services

were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 13.1.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every

workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 59/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Krishan Chander Singh s/o Shri Harnam Singh, r/o Village Makehar, P.O. Cholthara,
Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Krishan Chander Singh s/o Sh. Harnam Singh, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 04.7.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the

notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 04.7.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?

. .OPP

2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?

. .OPP

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed.

Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Krishan Chander Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta

Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 04.7.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref No. : 216/2010

Date of Institution : 04.8.2010

Date of Decision : 10.7.2012

Shri Lal Singh s/o Shri Narain Singh, r/o Village Mathiana, P.O. Bagsaid, Tehsil Thunag,
District Mandi, H.P.

....Petitioner

Versus

Executive Engineer, I.&P.H. Division Sunder Nagar, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Shri Lal Singh s/o Shri Narain Singh by the Executive Engineer, I. & P.H. Division Sunder Nagar, District Mandi, H.P. w.e.f. 16.11.2000 without serving notice, charge sheet, without holding inquiry and without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above aggrieved workman is entitled to”.

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar by the respondent on 1st January, 1998 in Sub Division, Thunag. He worked as such up-to 15.11.2000. On 16.11.2000, his services were terminated by the respondent without giving any notice and paying the compensation. He had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The persons junior to him namely S/Sh. Param Dev, Shiv Lal, Nirmal Singh, Rom Chand and many others are serving the respondent/department. The latter has failed to adhere to the principle of ‘last come first go’. After the termination of his (petitioner’s) services, new/fresh hands have been engaged by the respondent. While dispensing with his services the respondent had assured to re-employ him, but in vain. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short). As such, he (petitioner) prays that his termination be set aside. The respondent be directed to re-engage him with all consequential benefits including the seniority, continuity in service and payment of back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. On merits, it has been owned that the relationship of employer and employee exists between the

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent.

- Whether the disengagement of the petitioner w.e.f. 16.11.2000 is violative of the provision of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

2. Whether the petition is not maintainable as alleged. If so, to what effect?

3. Whether the petition is suffered from the vice of delay and laches as alleged. If so, to what effect?

..OPR

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Lal Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he joined the service on 05.3.1999. He worked during the years 1999 and 2000 only. He denied that he used to remain absent and left the service on 16.11.2000 voluntarily. He also denied that S/Sh. Param Dev and Shiv Lal etc. are senior to him. He owns the agricultural land. He makes both the ends meet by doing the work of agriculture and private job. He denied that he is not entitled to the reemployment and compensation etc. since he left the job of his own.

9. Conversely, Shri Sardeep Kaushal, Executive Engineer, I&PH Division Sundernagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that new/persons have been appointed after the issuance of the seniority list Ex. RW1/G. He admitted that no notice was sent to the petitioner calling upon him to join the duties. He denied that the petitioner had completed 240 days of work and he has given a phoney statement.

10. Ex. RW1/B is the mandays chart relating to the petitioner.

11. Exts. RW1/C to F are the mandays charts pertaining to S/Sh. Shiv Lal, Rom Chand, Nirmal Singh and Param Dev respectively.

12. Ex. RW1/G is the seniority list of daily waged beldars who have completed eight years of service as on 31.3.2008 (31.12.2007) considered for regularization in the meeting of Divisional Level Screening Committee held on 16.10.2008.

13. It is the admitted case of the parties that the petitioner was appointed as a daily waged beldar on 05.3.1999 and he worked intermittently up-to 15.11.2000. The said fact finds support from the mandays chart Ex. RW1/B. The version of the petitioner is that on 16.11.2000, his services were terminated by the respondent wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Absence from duty is serious misconduct. There is nothing on the record to show that some disciplinary action was initiated against the petitioner by the respondent for his alleged willful absence from duty. Even there is nothing on the record to suggest that the respondent had sent a notice to the petitioner calling upon him to resume the duties after he allegedly left/abandoned the job. The plea of abandonment put forth by the respondent is not established.

14. The petitioner (PW1) in his cross-examination admitted that he was initially engaged by the respondent on 05.3.1999. The mandays chart Ex. RW1/B unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 16.11.2000 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The statement made by the respondent (RW1) and the seniority list Ex. RW1/G clarify that many persons junior to the petitioner are serving the respondent/department. The latter has failed to follow the principle of 'last come first go'. Not only this, the respondent (RW1) in his cross-examination admitted that after the issuance of the seniority list Ex. RW1/G, new/fresh hands have been engaged. There is nothing on the record to show that an opportunity of re-employment was given to the petitioner before engaging the new/fresh hands. That being so, the action of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under the said Sections, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination.

16. This issue has been decided accordingly.

ISSUE NO. 2

17. Not pressed.

ISSUE NO. 3

18. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

20. The petitioner (PW1) in his cross-examination admitted that he earns his livelihood by doing the work of agriculture and private job. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It does not appeal to a reasonable mind that a young man like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

21. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

22. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.11.2000 except back wages. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 100/2011
Date of Institution : 12.7.2011

Date of Decision : 21.7.2012

Miss Neena Kumari d/o Shri Sita Ram, r/o Village Badyat, P.O. & Tehsil Sadar, Distt. Bilaspur, H.P.

....Petitioner

Versus

i) The Regional Project Director, Mid Himalayan Watershed Development Project, Lakhanpur, Distt. Bilaspur, H.P.

ii) The Divisional Watershed Development Officer, Bahadurpur Watershed Division at Namhol, Distt. Bilaspur, H.P.

....Respondents

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent : Sh. Jitender Rana, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the service of Miss Neena Kumari d/o Sh. Sita Ram, Daily Wage Data Entry Operator/Social Mobilizer by the The Divisional Watershed Development Officer, Bahadurpur Watershed Division at Namhol, Distt. Bilaspur, (H.P.) w.e.f. 06.2.2010 without following the provision of the Industrial Disputes Act, 1947 and retaining the junior workmen as alleged by worker, is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he is an orphan having no source of income. On 17.3.2009, her services were engaged by the respondents as a Data Entry Operator-cum-Social Mobilizer. Before the appointment, she was subjected to the personal interview. She worked regularly up-to 05.2.2010 on the above noted post. On 6th February, 2010, her services were terminated by the respondents by a verbal order. Neither any notice was given to her nor she was informed about her misconduct. New persons namely S/Sh. Vinay Negi and Rakesh, who are influential, were employed by the respondents. They are still serving the respondents/department. Not only this in the month of February, 2010 itself, 13 new/fresh hands were engaged by the respondents. She was not given an opportunity of re-employment. The respondents have failed to adhere to the principle of ‘last come first go’ which amounts to unfair labour practice. Her seniority has been disturbed and she has been discriminated. She had worked for more than 240 days under the respondent. She requested the respondent time and again to re-engage her, but in vain. An application dated 28.6.2010 for re-employment was also moved by her before the respondent. The latter per letter dated 12.7.2010 expressed the inability to re-engage her services. Thereafter, she sent a demand notice dated 16.8.2010 to the respondent. Copy of the said notice was forwarded by her to the Labour Inspector, Bilaspur. From the date of her disengagement, she is unemployed. The act and conduct of the respondent is illegal and unauthorized. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (‘the Act’ for short). As such, she (petitioner) prays that her termination be set aside. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of back wages etc.

3. On notice, the respondents appeared. They filed prolix reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that Madhya Himalaya Jalagam Vikas Pariyojna, Himachal Pradesh was started from 1st October, 2005 in the State. The project will continue up-to the month of March, 2013 and is being run with the aid provided by the World Bank. Officers/officials are working in various departments of the project on deputation and secondment basis. To achieve the targets within the stipulated time, some persons were employed on different posts on contract basis. The contract is renewed after every six months taking into account the work and conduct of the employees. No provision is there for employment on permanent basis in the project. Casual/temporary workers are engaged as per the requirement of the project. Their services are dispensed with on the completion of the work. The petitioner was appointed as Data Entry Operator-cum-Social Mobilizer against a vacant post on part time basis temporarily. She was being paid Rs.110/- daily. She worked as temporary/casual worker from 24.3.2009 to 05.2.2010. In the month of December, 2009, interviews were held in their (respondent's) office to fill up the vacant posts of Data Entry Operator-cum-Social Mobilizer on contract basis. The petitioner also appeared in the personal interview on 19.12.2009 before the selection committee. As she failed to qualify the test/interview, she was not given the appointment as Data Entry Operator on contract basis. The selected candidates were appointed against the vacant posts on contract basis. For these reasons the petitioner was removed from service by a verbal order on 06.2.2010. In all the Divisions/Units of the project educated unemployed youth is employed on temporary/casual basis to complete the work. Their services are disengaged as and when the work is over. No person, who has been temporarily engaged in the project, has a right to claim permanent employment/absorption in the project. There is no provision of permanent employment in the project. On merits, it has been owned that the petitioner worked as Data Entry Operator-cum-Social Mobilizer from 24.3.2009 to 05.2.2010. She served as a temporary/casual/part time worker on payment of Rs.110/-daily. S/Sh. Vinay Negi and Rakesh have not been appointed as alleged. No provision of the Act has been infringed. The petitioner failed to qualify the interview in which she appeared because of which her services were disengaged. She is not entitled to any relief. No post of Data Entry Operatorcum-Social Mobilizer is vacant at present. In these circumstances, the respondent prays that the petition in hand being meritless be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondents. It has been maintained that the project will continue in the State of Himachal Pradesh up-to the year 2016. She was not appointed as a temporary/casual/part time worker. Rather, her services were engaged as a daily wager.

5. Vide order dated 03.12.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f.06.2.2010 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as the petitioner had been engaged against the specific project as alleged. If so to what effect?
..OPR
3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
Issue No.2 : Yes

Relief. :

Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Miss Neena Kumari stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she stated that she served the respondent from 17th March, 2009 to 5th February, 2010. She admitted that she served in a project of the World Bank. The payment used to be made to her out of the funds of the project. She does not know that the project in which she worked is to continue up-to a particular period. When her services were initially engaged, no interview was held. She had appeared in an interview on 19th January. She cannot tell the year. She had applied for the post before taking the interview. Other persons had also applied for the said post. She had moved a fresh application for her appointment. She was removed from service after the interview on merit basis. On 28.6.2010, she preferred an application for re-employment after she was not selected on the basis of the interview. She denied that S/Sh. Vinay and Rakesh are not serving the respondent/department. She cannot say that there is no provision of regular appointment in the project. She is not aware of the fact that the project was started in the year 2005 and will come to an end in the year 2013. She does not know that any post of Data Entry Operator-cum-Social Mobilizer is lying vacant with the respondent or not. She denied that she is not entitled to re-employment etc. and has instituted a phoney petition.

10. Conversely, Shri Jivan Lal Tank, Divisional Watershed Development Officer, Namhol (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the petitioner served for 274 days and her services were terminated w.e.f. 06.2.2010. He also admitted that in the month of February, 2010, 13 new workers were appointed. Self stated, their services were engaged after holding an interview. The petitioner had also appeared in the interview in which she was not selected. New recruitments have been made as per R&P Rules. The petitioner was not appointed under those Rules. He admitted that the project will continue up-to March, 2013 only. He refuted that the services of the petitioner have been terminated unlawfully.

11. Mark-A is the copy of the certificate issued by the Pradhan, Gram Panchayat Bhamta evidencing that the petitioner is an orphan having no means to earn.

12. Mark-B is the copy of the experience certificate. It shows that the petitioner served in the project from March, 2009 to January, 2010. She worked on the post of Data Entry Operator and Social Mobilizer as a casual worker not more than 90 days at a time.

13. Mark-C is the copy of the month-wise mandays chart relating to the petitioner.

14. Mark-D is the copy of the application dated 28.6.2010 preferred by the petitioner before the respondents for re-engagement.

15. Mark-E is the copy of the letter dated 12th July, 2010 written by the respondent No.2 to the petitioner intimating her that no post of Data Entry Operator and Social Mobilizer is available in the office because of which her services cannot be re-engaged. In this letter it has also been mentioned that all the newly appointed candidates have joined their duties.

16. Mark-F is the copy of the demand notice dated 16.8.2010 served by the petitioner upon the respondent.

17. Ex. RW1/B is the mandays chart. It corresponds to Mark-C.

18. Exts. RW1/C1 to C11 are the copies of the bills showing the payment made by the respondent to the petitioner for the days she served.

19. Ex. RW1/D is the copy of the advertisement which was issued by the respondents for filling up various posts including 24 posts of Data Entry Operators.

20. Ex. RW1/E is the copy of the letter dated 17.8.2011 written by Regional Project Director, Mid Himalayan Watershed Development Project, Bilaspur (HP) to Divisional Watershed Development Officer, Namhol.

21. Ex. RW1/F is the merit sheet. It depicts that the name of the petitioner appears at serial No.12. The merit sheet was prepared after holding an interview for appointment of the Data Entry Operators in which the petitioner had also appeared.

22. Ex. PX is the copy of the experience certificate. The same corresponds to Mark-B.

23. From the evidence available on the record, it becomes clear that the services of the petitioner were engaged as Data Entry Operator-cum185 Social Mobilizer by the respondents on casual/temporary basis in a project and she served the respondents from 24.3.2009 to 05.2.2010 intermittently. The said fact finds support from the mandays chart Mark-C (which corresponds to Ex. RW1/B). The petitioner was paid the remuneration on per day basis as per the bills the copies of which are Exts. RW1/C1 to C11. The receipts of the payment vide these bills for the days the petitioner served the respondent has not been denied by the former.

24. It is an admitted fact that for filling up the posts of Data Entry Operators in the project on contract basis, advertisement (Ex.RW1/D) was issued by the respondents in different newspapers. Pursuant to the advertisement, which was duly published, the petitioner applied for the post of Data Entry Operator. A Selection Committee was constituted by the respondents which interviewed the candidates. The petitioner had applied for the post of Data Entry Operator in the OBC open category. Ex. RW1/F i.e. the merit sheet shows that the petitioner failed to qualify the test/interview. The persons who were meritorious than her were selected and appointed by the respondents. Since the petitioner had appeared in the interview/selection process, she is debarred from challenging its legality and validity. Simply because the petitioner failed to qualify the test/interview, it cannot be said that the selection process/interview held by the respondents is bad in the eyes of law.

25. At the cost of reiteration, I will like to add that the petitioner was working in a project on casual/temporary basis. She was being paid the remuneration per day. Her services were disengaged w.e.f. 06.2.2010 as she failed to qualify the test/interview. The evidence on the file reveals that the project in which the petitioner was serving will come to an end in the month of March, 2013. The persons who qualified the test/interview have been appointed by the respondents on contractual basis. Presently, no post of Data Entry Operator-cum-Social Mobilizer is lying vacant in the office of the respondents.

26. In S.M. Nilajkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608, the Hon'ble Supreme Court has held as under:

“.....The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- i) that the workman was employed in a project or scheme or temporary duration;
- ii) the employment was on a contract, and not as a daily-wager simplicitor, which provided interalia that the employment shall come to an end on the expiry of the scheme or project; and
- iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.....”

27. Taking into account the facts and circumstances of this case as well as the trite laid down in the ruling cited supra, in my considered opinion, the petitioner is not entitled to any relief. The claim put forth by her is not maintainable and is fallacious. The respondents were not required to comply with the provisions of the Act to get rid of the petitioner. It appears to me that the avarice of the petitioner to grab the job and the money has forced her to file a totally false and baseless claim.

28. These issues are decided against the petitioner and in favour of the respondents.

RELIEF (ISSUE NO. 3)

29. As a sequel to my findings on the issues No. 1 and 2, the instant claim petition/reference being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 61/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Smt. Nipla Devi w/o Shri Hukam Chand, r/o Village Chhirjajar, P.O. Geiun, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Nipla Devi w/o Sh. Hukam Chand, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 01.1.2000. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority

under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner's) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- "i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.1.2000 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Nipla Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died

in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 02.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.1.2000 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 68/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Pawan Kumar s/o Shri Sukh Ram, r/o Village Kot, P.O. Tihra, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Pawan Kumar s/o Sh. Sukh Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 11.11.1998. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the

notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner's) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 11.11.1998 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?

. . OPP

2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?

. . OPP

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?

. . OPR

4. Whether the reference is not maintainable as alleged. If so, to what effect?

. . OPR

5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Issue No.4 : Not pressed.

Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Pawan Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in

the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 11.11.1998 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 62/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Smt. Promila Devi w/o Shri Jagdish Chand, r/o Village Kot (Barhi), P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Promila Devi w/o Sh. Jagdish Chand, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 15.11.1998. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated

14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon'ble High Court, it was observed orally by the Hon'ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon'ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner's) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner's) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 15.11.1998 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Promila Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her

services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 15.11.1998 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex. RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of

Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 215/2010

Date of Institution : 04.08.2010

Date of Decision : 17.7.2012

Shri Rajinder Kumar s/o Shri Khub Ram, r/o Village Mahira, P.O. Balag, Tehsil Sunder Nagar, District Mandi, H.P.

....Petitioner

Versus

Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. H.C. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Rajinder Kumar s/o Shri Khub Ram by Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. August, 2008 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him engaged continuously by the above employer without following the principle of ‘Last Come First Go’ is legal and justified? If not, to what back wages, service benefits and relief the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent. He had completed 240 days of work in the years 2001, 2002 and 2003. His presence has however been shown for only 174, 306 and 87 days in the years 2001, 2002 and 2003 respectively. The record relating to his working days for the years 2004 to 2007 has not been supplied by the respondent despite the complaint preferred by him under the Right to Information Act, 2005. Wrong and incomplete working days have been shown by the respondent. In the month of August, 2008, his services have been terminated by the respondent. Neither any notice was issued to him nor the retrenchment compensation was paid. The persons junior to him (petitioner) are still serving the respondent/department. The latter has removed him (petitioner) from service by adopting the pick and choose method so as to accommodate the juniors. Sufficient work is available with the respondent/department. He (petitioner) is entitled to the regularization of his services as per the norms fixed by the Govt. of Himachal Pradesh. In the year 2008, when he (petitioner) was about to complete 240 days of work, his services were disengaged by the respondent so that he is not entitled to the benefit of regularization. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (‘the Act’ for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “ (i) that the services of the applicant/claimant may kindly be ordered to be reinstated as he was working at the time of retrenchment/termination;
- (ii) that the back wages for intervening period may kindly be ordered to be paid to the applicant/claimant;
- (iii) that the seniority of the applicant/claimant may be ordered to be maintained by counting the period of absence from the date of joining;
- (iv) that the services of the applicant/claimant may also be ordered to be regularized in the light of the Judgment of the Hon’ble APEX COURT in case titled as “Mool Raj Upadhyay versus State of H.P.”;
- (v) and/or any other relief to which the applicant/claimant is found entitled to under the facts and circumstances of case may also be granted in favour of the applicant/claimant and against the respondent/Department. It is, therefore, respectfully prayed that in view of the facts and circumstances submitted above, the applicant/claimant may kindly be granted reliefs as prayed for here-in-above, in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner. The petition has become infructuous as the petitioner stands re-engaged w.e.f. August, 2009 for the seasonal forestry works. The petitioner has misrepresented the facts. He has concealed the material facts from the Court. On merits, it has been owned that the services of the petitioner were engaged as a daily waged labourer in the month of February, 2001. However, it has been pleaded that the petitioner was engaged for seasonal forestry work subject to the availability of the funds. The petitioner used to work intermittently as per his sweet will. No fictional breaks were ever given to him at any point of time. The mandays chart of the petitioner is annexed as annexure R-1 to the reply. The services of the petitioner were not terminated as alleged. Therefore, there is no question of complying with the provisions of the Act. Forest Department is a Government organization for the welfare of the public at large. It cannot be termed as an industry within the meaning of the Act. The petitioner worked as a casual labourer. His services are/were coterminous with the closure of the season/work. He (respondent) has re-engaged the petitioner w.e.f. August, 2009. The services of the petitioner are being utilized by him (respondent) with the start of the fresh season even after his temporary disengagement in the month of August, 2008 on account of the non-availability of the funds. No person junior to the petitioner has been engaged or retained in service at the end of every forestry season. Daily waged workers are called subject to the availability of work and funds on the principle of ‘last come first go’. Keeping in view the availability of the funds, he (respondent) is not in a position to provide the employment to the petitioner or similarly situated workmen for the whole year. The petitioner did not complete 240 days of work in any calendar year except the year 2002 as claimed. No wrong/incorrect information has been provided. The petitioner is not entitled to regularization of his services as per the policy of the Government. The petitioner worked for only 91 days in the year 2008 as is apparent from the mandays chart. No provision of the Act has been infringed. The petitioner is not entitled to any relief. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that his services were engaged for seasonal forestry work.

5. Vide order dated 11.8.2011, below given issues were struck by my Id. Predecessor:
1. Whether the disengagement of the petitioner w.e.f. August, 2008 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so to what relief the petitioner is entitled to?
..OPP
 2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
 3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
..OPR
 3. Relief.
 - 4.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No
 Issue No.2 : Not pressed
 Issue No.3 : No
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Rajinder Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were reengaged by the respondent in the year 2009. He also denied that he had worked during the years 2009 and 2010. Further, he denied that his services were engaged for the seasonal forestry work only. S/Sh. Tilak Raj and Naresh are junior to him, who are serving the respondent. He denied that they too are doing the seasonal work only. He denied that his services were dispensed with in the month of August, 2008 due to the non-availability of the budget and he has given a phoney statement. He makes both the ends meet by doing the agricultural work.

9. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Suket Forest Division (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he denied that the mandays chart Ex. RW1/B is incorrect. He admitted that the services of the petitioner were engaged as a daily wager. Volunteered, the petitioner was engaged as per the availability of the work. He admitted that neither any notice was given nor the compensation was paid to the petitioner. He denied that the petitioner was removed from service in the year 2008, so that he does not complete 240 days of work.

10. Mark-A is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/B.
 11. Mark-B is the seniority list of daily wagers of Suket Forest Division, Sunder Nagar as it stood on 31.3.2004.

12. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar in the month of February, 2001. The respondent in his reply has pleaded that the services of the petitioner were temporarily disengaged in the month of August,

2008 due to the non-availability of the funds/budget. There is no documentary evidence on the record to show that the petitioner was engaged for seasonal forestry work as claimed by the respondent/department.

13. The petitioner (PW1) in his cross-examination denied that he had worked with the respondent in the years 2009 and 2010 as well. The mandays chart Ex. RW1/B unfolds that in the month of August, 2009 the petitioner worked for 30 days with the respondent/department. In the year 2010 he worked during the months of January, February and August, 2010 for total 57 days. There is no cogent and convincing evidence on the record to show that the mandays chart Ex. RW1/B produced by the respondent is wrong. The bald statement made by the petitioner (PW1) to the effect that he did not work with the respondent during the years 2009 and 2010 cannot be taken as a gospel truth. Since the petitioner was re-engaged after his termination in the month of August, 2008, the said controversy between the parties pales into insignificance.

14. The mandays chart Ex. RW1/B clarifies that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. August, 2008 as envisaged under Section 25-B of the Act. The provision of Section 25-F of the Act are thus not attracted in this case.

15. A glance of the seniority list Mark-B unfolds that the person junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. The action of the respondent, thus, contravenes the provisions of Section 25-G of the Act. Needless to say that for deriving the benefit under the said Section, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination.

16. There is nothing on the record to show that after the disengagement of the petitioner in the month of August, 2008, new/fresh hands have been engaged by the respondent. Therefore, the provisions of Section 25-H of the Act are also not attracted in this case.

17. As already mentioned after his disengagement in the month of August, 2008, the petitioner was re-engaged by the respondent in the years 2009 and 2010. It has come in the statement of the respondent (RW1) that the petitioner is not serving under him at present. This indicates that the petitioner is out of the service. In the references/claim petitions relating to the similarly situated workmen, it was ordered by this Court that the petitioner be re-engaged, (if not re-employed) and he should be given the seniority and continuity in service from the date his juniors have been given the said benefit so as to safe guard the interests of the workmen. Such orders passed by this Court have already attained the finality. To avoid discrimination, the petitioner is also entitled to such relief(s).

18. This issue is decided accordingly.

ISSUE NO. 2

19. Not pressed.

ISSUE NO. 3

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. The petitioner (PW1) in his cross-examination admitted that he makes both the ends meet by doing the work of agriculture. It does not appeal to a reasonable mind that a young man like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

23. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

24. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The termination of the petitioner ordered in the month of August, 2008 is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith (if not already engaged). He shall be entitled to the seniority and continuity in service from the date the said benefits have been given to his juniors. The petitioner shall not be entitled to the back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 39/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Shri Ram Lal s/o Shri Harbhaj Ram, r/o Village Bag, P.O. Garoru, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Ram Lal s/o Sh. Harbhaj Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 01.10.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is

highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.10.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect? . . . OPR
 4. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR
 5. Relief.
 6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
 7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Ram Lal stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.10.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 60/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Smt. Roshani Devi w/o Shri Tulsi Ram, r/o Village Tremble, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Roshani Devi w/o Sh. Tulsi Ram, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 08.4.1999. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner’s) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly

illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 08.4.1999 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect? . . . OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Roshani Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 08.4.1999 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 55/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Sant Ram s/o Shri Bichiter Singh, r/o Village Gamdhol, P.O. Dhawali, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Sant Ram s/o Sh. Bichiter Singh, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 01.8.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.8.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR

4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Sant Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.8.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs. 50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 64/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Smt. Sharda Sharma alias Anita w/o Shri Shashi Kant Sharma, r/o Village Banwar Kalan,
P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Sharda Sharma alias Anita w/o Sh. Shashi Kant Sharma, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 10.7.1998. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner’s) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 10.7.1998 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR

4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Sharda Sharma alias Anita stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 10.7.1998 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 54/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Shri Sohan Singh s/o Shri Sunder Singh, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent :

Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Sohan Singh s/o Sh. Sunder Singh by the Executive Engineer, H.P.P.W.D.(B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 01.11.1999. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such types of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.11.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Sohan Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.11.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 48/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Shri Suresh Kumar s/o Shri Sher Singh, r/o Village Brehal, P.O. Kamlah, Tehsil Sarkaghat,
Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Suresh Kumar s/o Sh. Sher Singh, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 04.2.1999. He worked as such up to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 04.2.1999 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Yes
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Relief. : Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Suresh Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 04.2.1999 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 38/2011

Date of Institution : 03.05.2011

Date of Decision : 04.07.2012

Shri Surinder Singh s/o Shri Roop Lal, r/o Village Chah, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Surinder Kumar s/o Sh. Roop Lal, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as daily rated beldar by the respondent on 11.11.1998. He worked as such up-to 07.7.2005. On 08.7.2005, his services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to him (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. He (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate his (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench him (petitioner) and his co-workers. The Chief Engineer being one of the interested parties and directly related with his (petitioner’s) employment did not provide proper opportunity of being heard to him (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench him (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon him (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in his (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate his (petitioner’s) services. At the time of his disengagement sufficient work and funds were available with the respondent/department. He (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of his termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.

- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. He (petitioner) is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 11.11.1998 and he worked as such up-to 07.7.2005. He was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 12.9.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Surinder Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked as a daily waged beldar up-to July, 2005. He also admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that his services alongwith 1087 other workers were dispensed with by the respondent. He denied that no person junior to him has been retained in service by the respondent. He also denied that the claim put forth by him is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating him that his services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 11.11.1998 and he worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned, several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 65/2011

Date of Institution : 18.05.2011

Date of Decision : 04.07.2012

Smt. Tara Devi w/o Shri Hari Chand, r/o Village & P.O. Kango Ka Gehra, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Tara Devi w/o Sh. Hari Chand, by the Executive Engineer, HPPWD (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 vide notice dated 04.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as daily rated beldar by the respondent on 01.5.1999. She worked as such up-to 07.7.2005. On 08.7.2005, her services were terminated by the respondent wrongly and illegally. No seniority list as per law has been prepared by the respondent. The persons junior to her (petitioner) are still working with the respondent/department and their services have been regularized. The respondent has failed to adhere to the principle of ‘last come first go’. She (petitioner) was engaged for doing the work of permanent nature which is still continuing. The Government of Himachal Pradesh vide notification dated 07.9.1992 conferred the powers of specified authority for the purpose of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short) upon the Labour Commissioner, Himachal Pradesh. In other States also, concerned Labour Commissioners are exercising the powers of the specified authority. In the instant case, the HPPWD in order to facilitate her (petitioner’s) illegal retrenchment and retrenchment of the co-workers, conferred the powers of the specified authority upon the Chief Engineer, Central Zone, Mandi per notification dated 14.2.2005 issued by the Government of Himachal Pradesh. The Chief Engineer directed the Executive Engineer to retrench her (petitioner) and her co-workers. The Chief Engineer being one of the interested parties and directly related with her (petitioner’s) employment did not provide proper opportunity of being heard to her (petitioner). He acted in a biased and discriminatory manner as well as granted the permission to retrench her (petitioner) and some other workers. The appointment of the Chief Engineer as specified authority is wrong, illegal and void ab-initio. In the month of April, 2005, the respondent/department served a notice under Section 25-N of the Act upon her (petitioner) and the other workers. Civil Writ Petition No. 486/2005 was filed before the Hon’ble High Court of Himachal Pradesh challenging the notification dated 14.2.2005. Reply to the writ petition was preferred by the respondent. When the civil writ petition came up for hearing before the Hon’ble High Court, it was observed orally by the Hon’ble Court that such type of notifications are not sustainable in the eyes of law. The State of Himachal Pradesh then rescinded the notification dated 14.2.2005 and conferred the powers of the specified authority under Section 25-N of the Act once again upon the Labour Commissioner. The Hon’ble High Court while disposing of the writ petition directed the competent authority to look into the legal sanctity of notification dated 14.2.2005 and the permission granted by the Chief Engineer resulting in her (petitioner’s) retrenchment and the retrenchment of the other workmen. The notification dated 14.2.2005 was issued by the department solely with a view to terminate her (petitioner’s) services. At the time of her disengagement sufficient work and funds were available with the respondent/department. She (petitioner) had completed 240 days of work in a block of 12 calendar months preceding the date of her termination. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. From the date of her disengagement, she is unemployed, having no source of income.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “i. That the notification dated 14.2.2005 bearing No. shram (A) 4-1/2005 may kindly be declared wrong and illegal and be set aside.
- ii. The permission granted by the specified authority cum-Chief Engineer, Central Zone Mandi under Section 25(N) of the Industrial Disputes Act, 1947 for the retrenchment of the claimant/applicant may kindly be declared null and void and be set aside and the retrenchment of Claimant/applicant be declared null and be set aside.
- iii. The claimant/applicant may kindly be ordered to be reinstated as daily rated beldar with full back wages, seniority, regularization and other consequential service benefits etc. and the present statement of claims may kindly be allowed in favour of the claimant/applicant with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the reference/claim petition is not maintainable as other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. She (petitioner) is estopped from filing the petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar on 01.5.1999 and she worked as such up-to 07.7.2005. She was retrenched from service w.e.f. 08.7.2005. Three months basic pay in lieu of the notice period and retrenchment compensation were paid to the petitioner. It stands admitted that some persons junior to the petitioner are working with him (respondent). The juniors are working due to non availability of the seniors who were transferred from other Division/Sub Division. The retrenchment notices have also been served on the junior workers who are surplus. It stands admitted that the specified authority viz. Chief Engineer, Central Zone, Mandi, had given the permission for retrenchment of the surplus labour. The notification dated 14.2.2005 was rightly issued by the department to avoid the litigation. The petitioner has been rightly removed from service. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 28.10.2011, below given issues were struck by my Id. Predecessor:

1. Whether the retrenchment of the petitioner under Section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged. If so, to what effect?
..OPP
2. Whether the termination of the petitioner is also violative of the provisions under Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what effect?
..OPP
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Yes
Issue No.3 :	No
Issue No.4 :	Not pressed.
Relief. :	Reference/claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Smt. Tara Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that she worked as a daily waged beldar up-to July, 2005. She also admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that her services alongwith 1087 other workers were dispensed with by the respondent. She denied that no person junior to her has been retained in service by the respondent. She also denied that the claim put forth by her is false.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services. He also admitted that one Smt. Mamta Devi w/o Shri Hans Raj was engaged as a daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as a daily waged beldar in the year 2008. Volunteered, she was re-engaged on compassionate grounds because her husband (Hans Raj) expired while serving the HPPWD. Before re-engaging Smt. Mamta Devi, no opportunity of re-employment was afforded to the petitioner. He denied that Smt. Mamta Devi was junior to the petitioner. He does not know that Shri Hans Raj (husband of Smt. Mamta Devi) died in the year 1999. He controverted that at the time of termination of services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list in respect of the daily waged beldars of the office of the respondent.

12. Ex. PW1/C is the category-wise seniority list of all the daily waged workers working under B&R Division, HPPWD, Dharampur as on 07.7.2005.

13. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the specified authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

14. Ex. RW1/B is the seniority list of daily waged beldars in respect of Dharampur Division who had completed 8 years of service up-to 31.3.2008.

15. Ex. RW1/D is the copy of the notice dated 04.7.2005 issued by the Executive Engineer, B&R Division, HPPWD, Dharampur to the petitioner under Section 25-N of the Act intimating that her services shall stand terminated w.e.f. 08.7.2005.

16. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily rated beldar on 01.5.1999 and she worked as such up-to 07.7.2005. It is also an admitted fact that the services of the petitioner were terminated by the respondent after issuing a notice dated 04.7.2005, the copy of which is Ex.RW1/D, w.e.f. 08.7.2005.

17. There is no denial of the fact that Chief Engineer, HPPWD, Central Zone, Mandi was appointed as a specified authority by the Government and he gave the permission to retrench the petitioner and other workmen per order dated 17.6.2005, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law in a number of Awards passed by this Court relating to the similarly situated workmen. Those Awards have been affirmed by the Hon'ble High Court of Himachal Pradesh.

18. From the statement made by the respondent (RW1) coupled with the seniority lists placed on the record, it can be gathered that the persons junior to the petitioner are serving the respondent/department. Smt. Mamta Devi w/o late Sh. Hans Raj was re-engaged by the respondent in the year 2008 i.e. after the retrenchment of the petitioner. There is nothing on the record to show that at the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was given to the petitioner. The respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified.

19. As already mentioned several references relating to similarly situated workmen have already been decided by this Court. The Awards rendered by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court while holding the retrenchment to be wrong and illegal has ordered the reinstatement of the workmen. The respondent has also been directed by the Hon'ble High Court to pay lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. To avoid discrimination amongst the workmen, the petitioner is also entitled to such relief(s).

20. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 3

21. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

23. It does not appeal to a reasonable mind that a person like the petitioner will sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed.

24. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

25. Not pressed.

RELIEF (ISSUE NO. 5)

26. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 04th day of July, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 441/2009
Date of Institution : 28.8.2009
Date of Decision : 28.8.2012

Shri Amar Singh s/o Shri Sihnu Ram through Sh. Sunder Singh Sippy, General Secretary, Himachal Pradesh Van Vibhag avam Van Nigam Kamgaar Union (INTUC), Q. No.100/3, Roda Sector, Distt. Bilaspur, H.P.

....Petitioner

Versus

1. Conservator of Forests, Bilaspur.
2. The Divisional Forest Officer Bilaspur, Distt. Bilaspur, H.P.

...Respondents

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondents : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether action of the employer i.e. i) Conservator of Forests, Bilaspur ii) The Divisional Forest Officer Bilaspur, Distt. Bilaspur, H.P. not to regularize the services of Sh. Amar Singh s/o Sh. Sihnu Ram w.e.f. 01.1.1996 whereas regularizing junior workers (as alleged by workman) is proper and justified? If not, what relief the above workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on 1st March, 1986 in Forest Range, Swarghat as a daily waged labourer. He worked as such continuously up-to 30.6.1997. On 1st July, 1997, his services were terminated by the respondents by a verbal order. Neither any notice was given to him nor he was informed about his misconduct, if any. He (petitioner) challenged the illegal termination order dated 01.7.1997 vide Reference No.4/2001 (RBT No.199/04). The said reference/claim petition was decided in his favour. Per Award dated 13.5.2005, the then Id. Presiding Judge, Labour Court-cum-Industrial Tribunal, Dharamshala, directed the respondents to reinstate him in service with all consequential benefits including the seniority. Against the Award dated 13.5.2005, the respondents preferred Civil Writ Petition No. 837/2005 before the Hon’ble High Court of Himachal Pradesh. The said civil writ petition was rejected by the Hon’ble High Court vide judgment dated 09.11.2005. In the year 2009, an order was passed by the respondents for the regularization of his services. Consequently, his (petitioner’s) services have been regularized from the year 2009 onwards. He is infact entitled to the regularization of his services on completion of 10 years of service w.e.f. 01.1.1996 as per the judgment of the Hon’ble Apex Court in the case titled as Mool Raj Upadhaya & Ors. vs. The State of H.P. The services of all the daily waged labourers have already been regularized by the respondents. The names of 101 daily waged labourers are there in the seniority list issued by the respondents on 31/12/2005. His (petitioner’s) name figures at serial Nos. 100 of the list. All the workers (except at serial No.98 and 101) whose names are there in the seniority list are enjoying the benefits of the regular employees. The persons whose services have been regularized by the respondents are junior to him. The act and conduct of the respondents not to regularize his services w.e.f. 01.1.1996 amounts to unfair labour practice. The same is also illegal and unjustified. As such, he (petitioner) prays that the respondents be directed to regularize his services w.e.f. 01.1.1996 with all consequential benefits.

3. On notice, the respondents appeared. They filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that this Court has no jurisdiction to entertain and decide the matter. The petitioner is a regular employee of the Himachal Government w.e.f. 12.1.2009. He is bound by the prevalent service rules. The claim of the petitioner has become infructuous with his regularization dated 12.1.2009. The petitioner is estopped from raising the industrial dispute time and again on the same cause of action. The instant petition is hit by the principle of res-judicata. The claim is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. He has concealed the material facts from the Court and has misrepresented himself. On merits, it has not been disputed that the services of the petitioner were engaged as a daily waged labourer w.e.f. 01.3.1986. The pronouncement of the Award dated 13.5.2005 has been owned. The said Award has been implemented in letter and spirit. It stands admitted that CWP No.837/2005 was dismissed by the Hon’ble High Court of Himachal Pradesh. The services of the petitioner have been regularized from January, 2009

onwards as a result of the implementation of the Award dated 13.5.2005. The petitioner is not entitled to the regularization from 01.1.1996 as claimed. The law laid down by the Hon'ble Apex Court in Mool Raj Upadhyaya & others vs. State of H.P. and others is not applicable to the facts of the present case. The distinction has been made by the Hon'ble High Court of Himachal Pradesh in the case titled as Gauri Dutt & others vs. State of H.P. [Latest HLJ 2008 HP 366]. The scheme of regularization of daily waged workers as approved by the Hon'ble Supreme Court in Mool Raj Upadhyaya's case does not deal with future contingencies. The services of the petitioner have been regularized under the scheme dated 11.12.1997 formulated by the State of Himachal Pradesh. In accordance with the Award dated 13.5.2005, the petitioner was reinstated w.e.f. 01.1.2006. For this reason he could not be regularized with the first batch of workmen working under them (respondents) from 01.1.1998. After the re-engagement of the petitioner as per para 1 of the scheme, the posts for regularization were available in the year 2007. The case of the petitioner and other workmen was sent for approval to the competent authority vide letter No.1038 dated 29.5.2007. On the receipt of the approval from the competent authority the services of the petitioner were regularized w.e.f. 12.1.2009. He has attained the status of a regular Class-IV employee and is governed by the service rules. In the seniority list issued on 31.12.2005, the name of the petitioner appears at serial No.100. Daily waged mazdoors whose names are there from serial No.98 to 101 have not been regularized. The dispute between the parties has been finally settled per Award dated 13.5.2005. The petitioner has not enforceable cause of action. The petition is meritless. In these circumstances, the respondents pray that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Per order dated 07.7.2011, following issues were struck by my Id. Predecessor:-

1. Whether the act of the respondent is not regularizing the petitioner w.e.f. 01.1.1996, whereas persons junior to him had been regularized is illegal and unjustified, as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
3. Whether the petitioner is estopped from filing the present reference Award having order raised the same issues earlier before this Court as alleged. If so, to what effect?
..OPR
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	No
Issue No.2 :	Yes
Issue No.3 :	Not pressed.
Relief. :	Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Amar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC, he reiterated on oath the contents of the

petition/statement of claim in its entirety. In the cross-examination, he admitted that earlier also he had raised an industrial dispute. The reference/claim petition was decided by the Court on 13.5.2005, whereafter, his services were re-engaged in the year 2006. He admitted that the posts were available in the year 2007 for the regularization of his services. His name was considered alongwith the other workmen for regularization. He admitted that his services were regularized w.e.f. 12.1.2009. The workmen whose names figure at serial No.98, 99 and 101 of the seniority list Ex. PW1/C have not been regularized. He denied that his services have been regularized by the respondents on the due date.

9. Conversely, Sh. Dev Raj Kaushal, Divisional Forest Officer, Bilaspur (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. In the cross-examination, he admitted that the services of the petitioner were engaged as a daily waged beldar on 01.3.1986. The petitioner was reinstated in service as per the order of this Court. The appeal instituted by the department before the Hon'ble High Court of Himachal Pradesh was rejected. He does not know that the persons junior in service to the petitioner have been regularized. He denied that the petitioner was entitled to the regularization of his services from 1st January, 1996.

10. Mark -A is the copy of the Award dated 13.5.2005 passed by this Court in Reference No.4/2001 (RBT No.199/2004) titled as Amar Singh vs. Divisional Forest Officer, Bilaspur.

11. Mark-B is the copy of the judgment dated 09.11.2005 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.837/2005 titled as State of Himachal Pradesh, through Secretary (Forests) and another vs. Amar Singh.

12. Ex. PW1/B is the copy of the memorandum dated 12.1.2009 issued by the Divisional Forest Officer, Bilaspur (respondent No. 2) regarding the regularization of the services of the petitioner.

13. Ex. PW1/C is the copy of the seniority list. The name of the petitioner figures at serial No.100 of this list.

14. Ex. RW1/B is the copy of the memorandum dated 12.1.2009. It corresponds to Ex. PW1/B.

15. Ex. RW1/C is the copy of the demand notice dated 14.3.2008 served upon the respondents by the petitioner.

16. Ex. RW1/D is the copy of the Award dated 13.5.2005. It corresponds to Mark-A.

17. Ex. RW1/E is the copy of the judgment dated 09.11.2005 of the Hon'ble High Court of Himachal Pradesh. The same corresponds to Mark-B.

18. Ex. RW1/F is the copy of the letter dated 11th December, 1997 written by the Chief Secretary to the Government of Himachal Pradesh to various officers. Per this letter, instructions were issued for the regularization of daily waged workers in the departments (other than Public Works and Irrigation and Public Health Departments)/Boards/Corporations/Universities etc.

19. Ex. RW1/G is the copy of the letter dated 22.12.2008 written by the Principal Chief Conservator of Forests to the various Forest Officers with respect to the regularization of daily waged/contingent paid workers. In accordance with this letter, the services of the petitioner (a daily

wager) are/were to be regularized after completing the codal formalities as per the policy of the Government.

20. Relying upon Mool Raj Upadhyaya vs. State of H.P., 1994 SCC Supl. (2) 316, State of H.P. & Ors. vs. Gehar Singh, [2007 (113) FLR 434] and Gauri Dutt & Ors. vs. State of H.P., Latest HLJ 2008 (HP) 366, Id. AR for the petitioner contended that since his client had completed 10 years of service on 01.1.1996, his services are/were required to be regularized from that date and not 12.1.2009 as has been done by the respondents. On the other hand, Id. DDA for the respondents argued that the policy of regularization was extended to the forest department per letter dated 11.12.1997 (Ex. RW1/F) issued by the Chief Secretary to the Government of Himachal Pradesh. The services of the petitioner have been rightly regularized from 12.1.2009 as per the policy of the Government and the Award dated 13.5.2005 passed by this Court, the copies of which are Mark-A and Ex. RW1/D.

21. To my mind the argument advanced by the Id. DDA holds the force and is sustainable. Admittedly, the petitioner had joined the service on 01.3.1986. Therefore, he did not complete 10 years of continuous service on 01.1.1996 as claimed. It is well known that this Court cannot go beyond the terms of the reference. The petitioner is not entitled to the regularization of his services from 01.1.1996 as claimed.

22. There is not even an iota of evidence on the record to show that the services of any workman junior to the petitioner were regularized by the respondents anterior to him. No date of regularization of any of the persons junior to the petitioner has come on the record. Therefore, it cannot be said that the workers junior to the petitioner were regularized by the respondents earlier to him.

23. In my considered opinion, the services of the petitioner have been rightly regularized by the respondents as per the policy of the Government dated 11th December, 1997 (Ex. RW1/F). He is not entitled to any relief.

24. This issue is decided against the petitioner and in favour of the respondents.

ISSUE NO. 2

25. Taking into account my findings on issue No.1, it is held that the reference/claim petition is not maintainable.

26. Otherwise too, per Award dated 13.5.2005 passed by this Court in Reference No.04/2001 (RBT No.199/2004), titled as Amar Singh vs. Divisional Forest Officer, Bilaspur, the petitioner was ordered to be reinstated in service with 50% back wages and all consequential service benefits including the seniority. If the services of the petitioner were not regularized on the due date (according to him), he is/was required to file an application for execution of the Award dated 13.5.2005 instead of agitating the matter time and again. For this reason too, the reference/claim petition is bad in the eyes of law.

27. This issue is also decided against the petitioner.

ISSUE NO. 3

28. Not pressed.

RELIEF (ISSUE NO. 4)

29. As a sequel to my findings on the above issues, the instant claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 137/2011

Date of Institution : 28.11.2011

Date of Decision : 08.08.2012

Shri Basant Singh s/o Shri Dumnu Ram, r/o Village Langehar, P.O. Giyun, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Basant Singh s/o Shri Dumnu Ram, Village Langehar, P.O. Giyun Tehsil Sarkaghat, Distt. Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 24.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

8. The petitioner Shri Basant Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the

respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE NO. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 148/2011

Date of Institution : 15.12.2011

Date of Decision : 08.08.2012

Shri Bhim Singh s/o Shri Bardu Ram, r/o Village Badehar, P.O. Kujabalh, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Bhim Singh s/o Shri Bardu Ram, r/o Village Badehar, P.O. Kujabalh, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had

completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been

admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

8. The petitioner Shri Bhim Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No.6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 65/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Smt. Bimla Devi w/o Shri Amar Singh, r/o Village and P.O. Brang, Tehsil Sarkaghat,
District Mandi, H.P. . . Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Bimla Devi w/o Shri Amar Singh, r/o Village and P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1999. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services, the seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along-with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of ‘last come first go’. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment, the principle of ‘last come first go’ has not been

adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 16.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Smt. Bimla Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi,

no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No.6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room. Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 141/2009

Date of Institution : 27.2.2009

Date of Decision : 06.8.2012

Shri Gian Chand (RTM) s/o Shri Surjan through Sh. N.L. Kaundal, Legal Advisor (BMS),
Village Balakrupi, P.O. Jalpahder, Tehsil Joginder Nagar, Distt. Mandi, H.P. . . . Petitioner.

Versus

The Resident Engineer, Shanan Power House Division, PSEB, Joginder Nagar, Distt. Mandi, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sunil Chaudhary, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether Non-promotion of Sh. Gian Chand (Regular T.Mate) s/o Sh. Surjan as Regular Fitter by the The Resident Engineer, Shanan Power House Division, PSEB, Joginder Nagar, Distt. Mandi, H.P. alongwith his juniors, Sh. Ram Singh and Sh. Ashok Kumar, in the Pay scale of Rs.3480-6500/-, w.e.f. 1998 (from the date of promotion of Sh. Ram Singh as Fitter, who is junior to him), is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from above employer?”

2. The case of the applicant/petitioner (as set out in the statement of claim/demand) reads thus:-

“1. That the applicant is regular employee of Punjab State Electricity Board and presently working under the Resident Engineer, P.S.E.B., Shanan Power House, Division, Joginder Nagar in the capacity of R.T.M.

2. That the applicant has raised the Industrial Dispute under section 2-K of the Industrial Disputes Act, 1947 against the Secretary of Board, Superintending Engineer, Circle Shanan, Joginder Nagar and Resident Engineer, PSEB, Shanan Power House Joginder Nagar vide his demand notice dated 01.02.2006 and copy of the same were forwarded to the Labour cum Conciliation Officer Joginder Nagar.

3. That the Punjab State Electricity Board has delegated the power to the Resident Engineer to file the reply on behalf of Board, before Conciliation, Arbitration, Industrial Court, Civil Court, High Court as well as Supreme Court. The reply of demand notice dated 01.02.2006 had been filed by the respondent vide his letter no. 3876 dated 26.05.2006 and during the Conciliation proceeding the demand of applicant has not accepted by Board and than the matter sent by the Conciliation Officer to appropriate Govt. and the same has been culminated the present dispute.

4. That the services of applicant was appointed as Peon by the XEN Civil Construction, Division No. 2, UDBC Malikpur, Pathankot and he was transferred to Resident Engineer Shanan Power House, Division PSEB, Joginder Nagar vide his office order No. 131 dated 29.11.1982, as Chowkidar against the vacant post and as such the applicant had been worked in the said post upto 31.05.1987.

5. That the services of applicant had been redesignated as Regular T-Mate vide Resident Engineer, PSEB Shanan Power House, Joginder Nagar vide his office order no. 277 dated 28.05.1987 and the applicant reported his arrival as RTM on 01.06.1987.
6. That the services of applicant had been promoted as Assistant Line Man along with others namely S/Shri Ram Singh s/o Shri Kalu Ram and others in the year 1996 but both the workmen forgo the promotion due to family problem and as such Sh. Ram Singh s/o Shri Kalu Ram Regular T-Mate was junior from applicant.
7. That it is specifically submitted here that the applicant had forgo the promotion as ALM vide SE/Operation, Circle Amritsar vide memo No. 4611/29 dated 27.02.1996.
8. That Sh. Ram Singh s/o Shri Kalu Ram who was working along with applicant as R.T.M. has forgo the promotion dated 19.03.1996.
9. That as per Punjab State Electricity Board instructions as employee who forgo the promotion become eligible for consideration of promotion after 3 years.
10. That Sh. Gian Chand applicant has forgo the promotion on 27.02.1996 and Sh. Ram Singh has forgo the promotion on 19.03.1996 as per the instruction of the Board an employee who forgo the promotion become eligible for promotion after 3 years after forgo the promotion as on 26.02.1999 and the applicant was entitled his next promotion w.e.f. 27.02.1999.
11. That it is specifically stated here that Sh. Ram Singh s/o Shri Kalu Ram who forgo the promotion on 19.03.1996 has promoted as Fitter in the year 1997 in the Regular pay scale Rs.3480-6500/-. Hence the applicant was senior to Sh. Ram Singh and entitled his promotion as Fitter from the date of Sh. Ram Singh promoted in the pay scale of Rs.3480-6500/- with others allowances as applicable in the said post along with all other consequential service benefits. The act of the respondent to not promote to applicant as Fitter is against the R&P Rules and also against the Principle of Natural Justice.
12. That Sh. Ashok Kumar Regular T-Mate was working along with applicant in the year February, 1996 and he had also forgo the promotion in the year 1996 but in the year 1998 he had been promoted as Plumber and the above named workman was also junior to applicant in the RTM Cadre Post. It is also submitted here that person namely Shri Jagdish Singh s/o Shri Kishan Chand was serving along with applicant in Shanan Power House as RTM in the year 1996 and his services has also been promoted by the Board as Assistant Lineman, but he has also forgo the promotion of ALM and thereafter the services of Shri Jagdish Chand has again promoted as skilled Helper.
13. That it is specifically submitted here that as per the policy of Punjab State Electricity Board the Regular T-Mate can be promoted as Fitter, Plumber and Pump Operator etc. as such all these above categories have been fixed by the Board in the equal pay scale w.e.f. 01.01.1996 i.e., on 3480- 6500/-.
14. That the applicant is the office bearer of the Union Bijlee Mazdoor Sangh affiliated with Bhartiya Mazdoor Sangh and the applicant is active member of union and on account of his union activities the respondent deprived him for promotion and the same is unfair labour practice on the part of respondent/board in the fifth schedule clause 4 item no. (c) and (d) of the Industrial Disputes Act, 1947 and same has been violated under section 25-T and 29 of the Industrial Disputes Act, 1947.

15. That the acts of the managements of Board/Respondent to not promoted to applicant from the date of junior promoted is highly unjustified, arbitrary, unconstitutional, contrary and against the (R&P Rules) and also against the Principle of Natural Justice.

16. That the applicant is belonging to Schedule Caste category and he has also not given the benefits for promotion for S.C., quota and the same has also been violated against the promotion quota of S.C. Category as per Board Rules.

17. Relief's

It is therefore, prayed, the Hon'ble Court may kindly be given the following relief in the favour of applicant.

- i. The Hon'ble Court kindly be determine/consider the facts of applicant for promotion and order to the respondent/Board to be promote him as Regular Fitter in the pay scale of Rs. 3480-6500/- + allowances with all consequential service benefits throughout.
- ii. The Hon'ble Court again order to the respondent to pay all the arrear of payments from the date of junior Sh. Ram Singh promoted to onwards along with 9% interest and fixed him in seniority of Fitter Cadre before Ram Singh".

3. On notice, the respondents appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the petition is time barred. The promotion under challenge relates to the year 1996, whereas, the claim petition has been preferred in the year 2006. The petition is not maintainable since the petitioner/applicant has not approached the Board (respondent) by making a representation. For this reason, the claim petition is barred. The petitioner is estopped to challenge the promotion of the persons whose names have been mentioned in the claim petition since he (petitioner) had himself forgone the promotion time and again. As per the instructions issued by the Board, a person cannot be promoted after he forgoes the promotion for the second time. After forgoing the promotion for the second time, none is eligible for claiming the promotion in any manner whatsoever except the regular and routine promotions. The petitioner has challenged the promotions of S/Sh. Ram Singh, Ashok Kumar and Jagdish Kumar, who were promoted in the year 1997. They have not been arrayed as parties to the petition. Thus, the petition is bad for non-joinder of the necessary parties. Not only this, the promotion orders were passed by Superintendent Engineer, Shanan Power House and Secretary, Punjab State Electricity Board. Both have not been joined as parties to the petition. In their absence, the claim petition does not lie.

On merits paras 1 to 16 of the reply are reproduced below verbatim for ready reference:-

- “1. That the averments made in para-1 of the petition are not denied to the extent that the claimantapplicant was appointed as Peon by the XEN, Civil Construction Division No.2, UDBC, Malikpur, Pathankot and he was transferred to the office of the Resident Engineer, Shanan Power House, Division PSEB, Joginder Nagar by the Superintendent Engineer, Shanan Power House, Joginder Nagar vide his office order No. 131 dated 29.11.1982 as Peon but he was not posted as Chowkidar as mentioned in his application.
2. That the averments made in para 2 of the petition are admitted to the extent that a demand notice dated 1.2.2006 was received by the replying respondent. However, it is incorrect and wrong that the applicant can raise the Industrial Dispute on the mere issuance of a demand notice whereas as per the facts and circumstances and

law laid down by the Hon'ble Supreme Court the claim is not only suffers from delay and laches but also not maintainable otherwise as per the instructions 334 issued by the respondent-Board with respect to the persons who have opted to forego their promotion two times. The copy of the instruction is annexed herewith as Annexure R-1 for the kind perusal of this Hon'ble Tribunal. Hence, the reference made under the Industrial Disputes Act is misleading and is based on mis-representation of facts and law.

3. That the averments made in para 3 of the petition are correct to the extent that the Resident Engineer, Shanan Power House had the powers to file the reply on behalf of the Board before the Conciliation, Arbitration, Industrial Court, Civil Court, High Court as well as Hon'ble Supreme Court. It is also correct that the respondent has filed their reply to the demand notice vide letter dated 3876 dated 26.5.2006 and since the demand of the petitioner was illegal and based on misrepresentation of facts and law the respondents-Board did not accept the same. The Conciliation Officer should have dismissed the claim there and then not being maintainable in any forum but had illegally referred the same to the appropriate Government for further reference to this learned Tribunal. It is further respectfully submitted that the claimant-applicant was promoted as Assistant Lineman vide orders passed by the Superintendent Engineer/Operation Suburban Circle, Amritsar vide memo No.4611/29 dated 27.2.1996 but the claimant-applicant had chosen to forego the promotion voluntary and now he is estopped to claim the same against the instructions issued by the Board.
- 4&5. That the averments made in paras 4 & 5 of the petition are incorrect and wrong which are contrary to the records. However, it is respectfully submitted that one Sh. Ram Singh had worked as work-charged Fitter w.e.f. 16.2.1991 to 10.7.1995. He was appointed as regular Fitter on regular Fitter pay scale on dated 19.3.1999 as per the instructions of the respondent-Board. The workcharged service is also required to be taken into account at the time of promotion. On the basis of the situation prevalent at that time, the work charged employee was required to be given preference at the time of the promotion, hence Sh. Ram Singh had rightly been promoted as Fitter as per the respondent-Board's instructions. It is further submitted that an employee who forego the promotion became ineligible for consideration of promotion after a period of three years. Sh. Ram Singh foregoing the promotion on 19.3.1996 and promoted as Fitter on 19.3.1999 i.e. after a period of three years. Thereafter, the name of Sh. Gian Chand claimant was again recommended for promotion and he promoted as Assistant Line Man vide office order of Superintendent Engineer/City Centre, Amritsar vide memo no.9329/47 dated 12.8.2004 but he again chosen to forego the promotion. So far as the case of Sh. Ashok Kumar is concerned, who was working as Plumber and work charged Plumber for about a period of 7 years 9 months and 5 days. As such, as per the instructions of the respondent-Board, the employee being workcharged has to be taken into consideration and was taken into consideration while promoting him as regular Plumber. Rest of the averments made in these paras are not denied being matter of record. However, on the basis of foregoing the promotion voluntarily the applicant is not entitled to any relief.
6. That the averments made in this para are incorrect and wrong and have been made in order to mislead this Hon'ble Court. The applicant-claimant had forego the promotion more than six years whereas one Sh. Ram Singh had forego the promotion in the year 1996 only once. Hence, as per the instructions, who have

forgone the promotion two times i.e. three years as per the instruction, he will not be entitled for any further promotion for the period which has been claimed by the applicant. It is further submitted that the claimant-applicant cannot equate him with Sh. Ram Singh as per the submissions made above.

7. That the averments made in para 7 do not require any reply being matter of record. It is not denied that the applicant-claimant had forgo the promotion vide dated 27.2.1996.
8. That the averments made in para 8 of the petition do not require any reply being matter of record. It is admitted that one Sh. Ram Singh had forgo promotion on 19.3.1996.
9. That the averments made in this para are admitted to the extent that as per the instructions of the Punjab State Electricity Board, the employee who has forgone the promotion become ineligible for consideration of promotion after a period of three years. It is further respectfully submitted that the applicant-claimant had not chosen to take or opt the promotion after a period of three years rather had chosen to forgo his promotion two times i.e. about 7-8 years, he has not chosen to give his option for promotion, hence he has lost his right of promotion as per instructions issued by the Board on the ground that period as mentioned in this para 3 years.
10. That the averments made in para 10 of the petition are not denied to the effect that claimant-applicant had forgo the promotion on 27.2.1996 whereas Sh. Ram Singh had forgo the promotion on 19.3.1996 as per the instructions of the Board. However, it is emphatically denied that the applicant-claimant was entitled for promotion after a period of three years automatically because second time also after expiry of three years, the applicant-claimant cannot chose to forgo his promotion then the applicant-claimant is not covered under the instructions issued by the Board as per Annexure R-1. Hence, he cannot claim as such.
11. That the averments made in para 11 of the petition are incorrect and wrong to the extent that one Ram Singh was given the pay scale of Rs.3480-6500 in the year 1997. However, it is further clarified that Sh. Ram Singh was given pay scale of Rs.3400-6500 in the year 1999 when he had completed his three years period after forgoing the promotion and opted for further promotion immediately after the expiry of the three years period. The averments made are incorrect and wrong to the extent that the applicant has not been promoted as per the Recruitment and Promotion Rules and also is against the principle of natural justice. Whereas it is submitted that the Board has promoted and granted the scales as per the instructions and recruitment and promotion rules as prevalent and applicable to the services of the respective employees.
12. That the averments made in para 12 of the petition are incorrect and wrong as the same are misleading. Sh. Ashok Kumar was regular T-Mate and after the chances of promotion after a period of three years and was senior to the applicantclaimant and so was Sh. Jagdish Kumar who was regular T-Mate much earlier to the period the applicant had become eligible as per seniority list which is being annexed herewith as Annexure R-2 for the kind perusal of this Hon'ble Tribunal.

13. That the averments made in para 13 of the petition are incorrect and wrong as the same are misleading. The applicant-claimant has not experience and is not senior and cannot claim the equal pay scale. However, it is denied that the post of regular T-Mate can be promoted as Fitter, Plumber, Pump Operator etc. and have equal pay scale w.e.f. 1.1.1996 but since the applicantclaimant has no experience in these field and is not eligible for the same pay scale as claimed by him.
14. That the averments made in para 14 are incorrect and wrong. It is denied for want of knowledge that the applicant is the office bearer of the Union Bijlee Mazdoor Sangh which is affiliated to Bhartiya Mazdoor Sangh. No document whatsoever has been attached in support of this claim. Hence, the averments are denied in toto. It is further submitted that no violation whatsoever has been committed by the respondent-Board as per the provisions of the Industrial Disputes Act.
15. That the averments made in this para are incorrect and wrong. The respondent-Board has not promoted any of the junior but the promotion and pay scales have been given in accordance with law as prevalent as mentioned in the instructions as well as seniority list. Hence, the submissions made in this paragraph are in consonance with the facts and circumstances.
16. That the averments made in this para are denied for want of knowledge that the applicant-claimant belongs to Scheduled Caste category and he can seek the benefits of S.C. quota. However, it is further submitted for the clarification that the applicant-claimant may be a Scheduled Caste but he belongs to Himachal Pradesh whereas per the Rules the category of the S.C. quota are applicable only to the persons who belongs to Punjab. The applicant-claimant is not covered under the categories of Scheduled Caste which are acceptable in the category of Punjab Scheduled Caste who could have claim S.C. quota. Moreover, the applicant-claimant has not filed any document in support of his caste, the bare averments made by him cannot advance his case in any manner. Hence, the respondent-Board has not committed any violation in this regard. The copy of the categories of the Scheduled Caste which are acceptable and has recommendation/exemptions for the recruitment in the services is annexed herewith as Annexure R-3 for the kind perusal of this Hon'ble Tribunal".

In these circumstances, the respondent prays that the claim petition being frivolous, misleading, belated and based on wrong facts be dismissed with heavy costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been pleaded that he (petitioner) approached the respondent/Board time and again for promotion, but in vain. S/Sh. Ram Singh and Ashok Kumar are junior to him. They too had forgone the promotion alongwith him (petitioner). S/Sh. Ram Singh and Ashok Kumar were promoted in a period of less than two years by the respondent because of the pressure of the Union. He (petitioner) was not given an opportunity of promotion. The R&P Rules and the principle of natural justice have been violated. He is eligible for promotion in scheduled caste quota as well.

5. Vide order dated 19.6.2010, following issues were struck by my Id. Predecessor:

1. Whether the act of the respondent in not promoting the petitioner w.e.f. 27.2.1996 as a fitter is illegal and arbitrary as alleged. If so, to what relief the petitioner is entitled to?

OPP

2. Whether the petition is barred by limitation as alleged. If so, its effect thereto?

OPR

3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. In support of their arguments, the ld. Authorized Representative and counsel for the petitioner cited the below mentioned rulings:-

(1) Daya Nand Verma v/s State of Himachal Pradesh and another, Latest HLJ 2010 (HP) 1349.

(2) Naresh Kumar Versus Union of India and others, Latest HLJ 2008 (HP) 78.

I have scanned both these authorities. With humility, I will like to say that Daya Nand Verma's case deals with the situation where a senior employee was being paid less than his junior. In Naresh Kumar's case, mistake had crept inadvertently in the seniority list because of which the petitioner was ignored and his juniors were promoted. The same is not the situation in the present case. Therefore, the catena of law laid down in both the rulings (cited supra) is not applicable to the facts and circumstances of the instant case.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1 :

9. The petitioner Shri Gian Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the documents Exts. PW1/B to F.

In the cross-examination, he admitted that on 27.2.1996, he had forgone his promotion as Assistant Line Man. He denied that Sh. Ram Singh was senior to him. He admitted that he was not eligible to be appointed as a Fitter in scheduled caste quota. The instant industrial dispute was raked up by him in the year 2006, whereas the promotions in question took place in the year 1997. He denied that he has given a phoney statement to derive the undue benefits.

10. Conversely, Shri Jagdish Chand, Record Keeper, Punjab State Power Corporation Limited, Shanan Power House, Joginder Nagar, testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply. He too placed on the record the documents Exts. RW1/B to E.

In the cross-examination, he admitted that on 01.01.1987 the petitioner was regular T-Mate. He also admitted that Shri Ram Singh had forgone his promotion once. Further, he admitted that if a person forgoes the promotion, he is eligible to be considered for promotion after three years.

11. Ex. PW1/B is the copy of the letter/reply dated 26.6.2006 given by the respondent to the demand notice served by the petitioner under Section 2-A of the Act.

12. Ex. PW1/C is the copy of an office order dated 28.11.1997 issued by the respondent regarding the promotion of Shri Ram Singh.

13. Ex. PW1/D is the copy of a letter dated 22.10.1993 issued by the Board with regard to the promotion policy. It corresponds to Ex. RW1/D.

14. Ex. PW1/E is the copy of arrival report dated 29.11.1997 submitted by Shri Ram Singh, Fitter in the office of the respondent.

15. Ex. PW1/F is the copy of the information supplied to the petitioner by the respondent under the Right to Information Act, 2005 regarding the service particulars of the petitioner and Shri Ram Singh (Fitter).

16. Ex. RW1/B and C are the copies of the letters dated 16.3.1996 and 28.8.2004 written by the petitioner to the respondent. Vide these letters the petitioner had forgone his promotion twice.

17. Ex. RW1/E deals with the qualifications of the candidates for being appointed as Fitters and Electricians etc.

18. There is no denial of the fact that the petitioner is an employee of the respondent. Letter dated 22.10.1993 issued by the Punjab State Electricity Board, the copies of which are Exs. PW1/D and RW1/D stipulates as under:-

“An employee who foregoes his promotion shall be eligible for reconsideration for promotion after being debarred for three years for promotion as well as for the grant of 9/16 years time bound promotional/devised promotional scales and if he still foregoes his promotion after three years it shall make him permanently ineligible for promotion as well as for the grant of 9/16 years time bound promotional/devised promotional scales”.

19. No person can claim the promotion as a matter of right. Of course, an employee is to be considered for promotion as and when his turn comes. Admittedly, the petitioner had forgone his promotion twice per letters dated 16.3.1996 and 28.8.2004, the copies of which are Exts. RW1/B and C.

20. Letter dated 22.10.1993 (Ex. PW1/D) makes it abundantly clear that if a person forgoes his promotion after three years for the second time, it shall make him ineligible permanently for promotion as well as for the grant of 9/16 years time bound promotional/devised promotional scales. The promotions in question of S/Sh. Ashok Kumar and Ram Singh had taken place way back in the years 1997 and 1998. The petitioner (PW1) in his cross-examination admitted that the industrial dispute was raised by him in the year 2006 by issuing a demand notice under Section 2-A of the Act. Since the petitioner had forgone the promotion for the second time per letter dated 28.8.2004 (Ex. RW1/C), as per the policy of the respondent/Board, he is/was permanently ineligible for promotion. Therefore, he is/was debarred from raising the industrial dispute in the year 2006 particularly when he (petitioner) had forgone his promotion for the second time in the year 2004 vide letter dated 28.8.2004 (Ex. RW1/C).

21. That being so, I have no hesitation to conclude that the petitioner has no right to canvass that the action of the respondent denying the promotion to him is illegal and unjustified. The claim put forth by the petitioner is fallacious. He is not entitled to any relief.

22. This issue is decided against the petitioner and in favour of the respondent.

ISSUE No. 2 :

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

25. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 3) :

26. As a sequel to my findings on the various issues, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 26/2010

Date of Institution : 26.2.2010

Date of Decision : 09.8.2012

Shri Hem Raj s/o Late Sh. Hoshiar Singh, r/o Village Dugli, P.O. Lahra, Tehsil Salooni,
Distt. Chamba, H.P. . . Petitioner.

Versus

The Executive Engineer, HPPWD Division Salooni, Distt. Chamba, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Hem Raj s/o Late Sh. Hoshiar Singh by The Executive Engineer, HPPWD Division Salooni, Distt. Chamba, H.P. w.e.f. 08.10.1998 without complying the provisions of the Industrial Disputes Act, 1947, and keeping the juniors in job, as alleged by the workman, is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar w.e.f. 05.5.1994 by the respondent. He worked in HPPWD Sub Division, Salooni continuously up-to 07.10.1998. During the period of his employment, he (petitioner) had completed more than 240 days of continuous service in each and every calendar year. His services were terminated by the respondent on 1st March, 1995 alongwith 13 other workmen namely S/Sh. Nar Singh, Jagdish Chand, Ved Vias and Rakesh Kumar etc. Against the illegal termination order dated 01.3.1995, he (petitioner) and Sh. Nar Singh etc. instituted original applications before the Hon’ble Himachal Pradesh Administrative Tribunal, Dharamshala Bench. On 15.3.1995, the Hon’ble Tribunal stayed the termination order dated 01.3.1995. Accordingly, he (petitioner) was re-engaged by the respondent/department on the muster roll w.e.f. 30.3.1995. When the original application came up for hearing before the Hon’ble Tribunal, the same was withdrawn on the advise of the Hon’ble Tribunal in the month of August, 1998 with the liberty to raise the dispute before the appropriate Court/Forum under the Industrial Disputes Act, 1947 (‘the Act’ for short). After the withdrawal of the original application, the respondent engaged him (petitioner) continuously on the muster roll up-to 07.10.1998. On the said date, the concerned officer verbally told him (petitioner) that his services are no more required by the department w.e.f. 08.10.1998. His services have been disengaged by the respondent illegally by a verbal order without any reason. He has continuously worked for more than four years with 240 days of work in each and every calendar year of his appointment. Before the termination of his services neither any notice was served upon him nor the retrenchment compensation was paid. The persons junior to him have been retained in service by the respondent. Their names are S/Sh. Madho Ram and Karam Singh etc. At the time of his termination, the principle of ‘last come first go’ has not been followed by the respondent. The services of some of the workmen, who are junior to him have been regularized by the respondent. If his services would not have been disengaged illegally, he (petitioner) must have been regularized alongwith his juniors namely Sh. Madho Ram etc. The act and conduct of the respondent is illegal and unjustified. He has suffered heavy financial loss. His future has been spoiled. The respondent has contravened the provisions of Sections 25-F, 25-G and 25-H of the Act. From the date of his disengagement, he is approaching the respondent regularly for re-employment, but in vain. He has spotless service record and never remained absent from work. He did not attend to his duties as and when the work was not provided to him by the respondent. Muster rolls for the months of December, 1995 as well as November and December, 1996 were not issued in his name by the respondent. He (petitioner) is not a defaulter. Therefore, the working days for the above three months are to be counted towards the calculation of 240 days of continuous service in the respective calendar year. Some of the workmen, whose services were

dispensed with alongwith him (petitioner) are/were junior to him. The persons whose services were disengaged by the respondent instituted the cases before the Labour Court-cum-Industrial Tribunal against their illegal termination from service. The Awards have been passed in those cases and Sh. Baldev Ram etc. have been reinstated in service alongwith the back wages by the respondent/department. At the time of re-engaging S/Sh. Baldev Ram and Bhagat Ram etc., an opportunity of reemployment was not afforded to him (petitioner). He must have been reengaged on the muster rolls prior to the re-engagement of his juniors.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “a. The oral orders of retrenchment/termination of my services passed by the respondent w.e.f. 08.10.1998 be set-aside being illegal, arbitrary and unjustified.
- b. To direct the respondent to re-instate the services of petitioner with full back wages, seniority including continuity of services as the petitioner remained unemployed since the date of illegal retrenchment/termination of services to till date.
- c. To direct the respondent for the production of original record pertaining to the case of petitioner.
- d. To direct the respondent to re-engage petitioner on Muster Roll basis pending final decision of the case.
- e. Any other relief as the Hon’ble Court may deem fit”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petitioner was engaged during the month of May, 1994 as a daily waged beldar keeping in view the exigencies of work and funds. He used to remain habitually absent from work without prior permission/intimation to the competent authority. Earlier also the petitioner had left the job of his own. Thereafter, in the month of March, 1995, he approached the Hon’ble Tribunal by instituting O.A. (D) No. 268/1995 for his re-engagement. The original application was dismissed by the Hon’ble Tribunal on 21.8.1998. The petitioner then worked from the year 1995 to January, 1999. During the month of February, 1999, he again left the service of his own accord and free volition. The petitioner did not turn up to work. Now he has approached this Court for re-employment. The claim of the petitioner is unjustified. So far as the re-engagement and regularization of the services of S/Sh. Madho Ram, Karam Singh, Ved Vias and Nar Singh etc. is concerned, they have been re-engaged and regularized as per the orders passed by the Hon’ble Tribunal in OAs No. 422/95, 297/95, 283/95, 277/95, 282/95, 280/95, 281/95, 279/95, 307/95 & 298/95. S/Sh. Bhagat Ram, Karam Singh, Baja and Bhilo have been re-engaged and regularized as per the orders passed by the Hon’ble High Court in CWP No.517/2005 and the Hon’ble Tribunal in Reference No.138/1999. The petitioner is a habitual absconder from Government duty. He did not complete 240 days of work in all the years of his employment except the years 1996 and 1997.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager during the month of May, 1994. He worked for 81 ½ days in the year 1994, 232 ½ days in the year 1995, 262 days in the year 1996, 315 days in the year 1997, 226 days in the year 1998 and 16 days in the year 1999. The petitioner is not eligible for regularization as per the policy of the Government. The services of S/Sh. Nar Singh and Jagdish Chand etc. were not terminated alongwith the petitioner. They left the job of their own. After that, they were re-engaged and

regularized as per the orders passed by the Courts. It stands admitted that the petitioner was re-engaged on 30.3.1995 in compliance to the orders passed by the Hon'ble Tribunal. He worked up to the month of January, 1999 and thereafter abandoned the job. The petitioner never approached him (respondent) for re-engagement. He is absent from work for the last 11 years. Because of the long period of absence, the services of the petitioner stand automatically dispensed with. After the re-engagement of S/Sh. Baldev Ram etc., they did not leave the job. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the mandays chart produced by the respondent is not genuine. After the illegal termination of his services w.e.f. October, 1998, he (petitioner) raised the industrial dispute. During the pendency of the conciliation proceedings, he was re-engaged by the respondent in the month of January, 1999 and disengaged in the month of February, 1999. He is unemployed from the month of February, 1999 onwards. He never absented from duty. The respondent is trying to mislead the Court by manipulating the facts.

5. Per order dated 15.3.2011, following issues were struck by my Id. Predecessor:-

1. Whether the termination of the petitioner w.e.f. 08.10.1998 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect? OPR
3. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Yes
 Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 2 :

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Shri Hem Raj stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the documents Marks A to S. In the cross-examination, he denied that he left the service of his own. He admitted that the instant industrial dispute was raked up by him in the year 2007. He denied that he is not entitled to the re-employment etc. since he abandoned the job.

10. Conversely, Sh. Parvesh Kumar, Executive Engineer, HPPWD, Salooni (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were disengaged wrongly and he has given a phoney statement.

11. Mark –A is the copy of the Award dated 20.11.2004 passed by this Court in Reference No.132/1999 (RBT No.274/04).

12. Mark-B is the copy of the Award of the same date rendered by this Court in Reference No.130/1999 (RBT No.243/04) titled as Bhagat Ram & another vs. The Executive Engineer, HPPWD, Salooni.

13. Mark-C is the copy of Award dated 20.11.2004 pronounced by this Court in Reference No.138/1999 (RBT No.252/2004) titled as Sh. Baija & another vs. The Executive Engineer, HPPWD, Salooni.

14. Marks-D to R are the copies of the mandays charts/seniority lists of S/Sh. Madho Ram and Bhaga Ram etc.

15. Mark-S is the copy of the judgment dated 30.4.2007 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No.517/2005 titled as State of Himachal Pradesh & others vs. Sh. Bhagat Ram & another.

16. Ex. RW1/A is the copy of the muster roll from 04.1.1999 to 31.1.1999 which was issued in the name of the petitioner and others.

17. Ex. RW1/B is the mandays chart relating to the petitioner.

18. Exs. RW1/C1 to C14 are the mandays charts with respect to Sh. Madho Ram etc.

19. From the contents of the rejoinder submitted by the petitioner coupled with the copy of the muster roll Ex. RW1/A and the mandays chart Ex. RW1/B, it becomes clear that the petitioner had served the respondent/department in the month of January, 1999 as well. The petitioner worked for as many as 16 days in the month of January, 1999. The assertion of the petitioner that his services were re-engaged by the respondent in the month of January, 1999 during the pendency of the conciliation proceedings does not appear to be true as from the statement made by him as PW1, it can be gathered that he raised the industrial dispute only in the year 2007. This shows that when the petitioner worked with the respondent/department in the month of January, 1999 no industrial dispute was pending before the Labour-cum-Conciliation Officer or any other authority/Court.

20. It is the basic law that this Court cannot go beyond the terms of the reference. Since the petitioner served the respondent/department in the month of January, 1999 voluntarily, it cannot be said that his services were terminated by the respondent w.e.f. 08.10.1998 (as detailed in the reference). As the petitioner was not retrenched from service w.e.f. 08.10.1998 (as alleged), the reference/claim petition is not maintainable. Consequently, the petitioner is not entitled to any relief. As the services of the petitioner were not disengaged by the respondent w.e.f. 08.10.1998, by no stretch of imagination, it can be said that the termination order passed by the respondent on that day is illegal or violative of the various provisions of the Act.

21. These issues are decided against the petitioner and in favour of the respondent.

RELIEF (ISSUE No.3) :

22. As a sequel to my findings on the above issues, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 152/2012

Date of Institution : 02.3.2012

Date of Decision : 24.8.2012

Shri Ishwar Singh s/o Shri Harnam Singh, r/o Village Nanwan, P.O. Karsai, Tehsil Barsar,
Distt. Hamirpur, H.P. . . *Petitioner.*

Versus

1. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P.

2. The Director, Regional Horticulture & Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondents : Sh. Pawan Kumar Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ishwar Singh s/o Shri Harnam Singh, Village Nanwan, P.O. Karsai, Tehsil Barsar, Distt. Hamirpur, H.P. in the first instance w.e.f.21.3.2002 to 29.6.2004 and finally w.e.f. 14.11.2005 by the 1) The Registrar, Dr. Y.S.

Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. 2)The Director, Regional Horticulture & Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, back wages and other service benefits the above workman is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “1. That I was appointed through interview as Labourer on Daily Wages since 15-03-2000 and that I had been continuously been working with the respondent till 20th March 2002.
2. That a certificate awarded to the petitioner by the respondent in regard to his working (Photo copy attached as Annexure A).
3. That the respondent had not counted the weekly off and national and other festival holiday for which the wages have been paid to me by the respondent as per law lay down by the Hon’ble Supreme Court of India in the case of workmen of American Express International Banking Corporation V/s American International Banking Corporation reported in 1985 (67FJR) Page-189.
4. That in the case the national festival holidays and weekly off are added in the actual working day I had worked for more than 240 days of service in each completed year service.
5. That I was nor served with a notice of one month nor I was paid the wages for the same and I was also not paid the compensation as required under section 25-F (b) of the Industrial Disputes Act, 1947, those my termination is void and abinitio.
6. That Hon’ble Tribunal has passed the order dt. 05.04.2004 (Photocopy attached as Annexure-B). Once I had been give continuity of service I am fully entitled to the seniority except back wages.
7. That I cannot be terminated on 01.01.2005 which retaining juniors to me in service which are in Hundred , the names of those shall be disclosed at the time of evidence to avoid tempering of record by the respondents.
8. The lame excuse made by the respondent is that the workmen were temporary causal and seasonal but from the attendance sheet attached would show that I had worked throughout the whole years thus the contention of the respondents are ill-conceived.
9. The management is making pick and choose methods in regard to engagement and disengagement which is unfair labour practice.
10. That I had never been called for re-employment/reengagement as per provided under section 25-H of the Industrial Dispute Act, 1947. But the management is making fresh recruitment/fresh hands which had been admitted by management itself, which is a clear cut contravention of section 25-H of the Industrial Disputes Act, 1947.

11. That in fact there is no project nor there is a project work and no project work had ever been completed but the management by its most nefarious designs had terminated the services of the workmen again and again without complying the provisions of section 25-G, section 25-H and section 25-F of the Industrial Disputes Act, 1947.
12. On the date of my second termination of 14.11.2005. I had completed 267 days of working and as held by the Hon'ble Supreme Court of India that the appointment made for a specified period again and again when the work of the university is going on smoothly rather it had been expended day by day is an unfair labour practice as held by the Hon'ble Apex Court of India in the case of Haryana State V/s Mamni. Reported in 2006 AIR SEW 2979 Haryana State Electronics Development Corporation Para -9.

“The respondent was appointed from time to time. Her service used to be terminated on the expiry of 89 days on regular basis. However, it is notice that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bonafide. The High Court rejected the contention raised on behalf of the appellant herein stating:

It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been dispute, reveals that the respondent-workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to defeat the right available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner-management to employ the workman repeatedly after a national break, clearly falls within the ambit and scope of unfair labour practice.

Thus, it is the settled law of service jurisprudence that whenever work is continuously available, it is not open to the management to split out the work and change the nature of appointment just by giving several appointment letters and term edit as on contract basis. Resultantly all the appointment letters shall be treated as one and it shall be presumed that a workman has continuously worked for more than 240 days with the management”.

13. The management had agreed to give continuity of service and thus I am deemed to be in continuity of service but without back wages. The management had not considered this point at the time of my last termination and thus I am entitled to be service no notice or pay of one month in lieu thereof and compensation payable u/s 25-F (b) of the Industrial Disputes Act, 1947 has neither been paid till date and thus I am deemed to be in service.
14. That junior to me on 01.01.2005 were retained in service in violation to section 25-G of the Industrial Disputes Act, 1947.
15. That my first termination w.e.f. 21.3.2002, 2nd termination w.e.f. 31.12.2004 is illegal, void is against the law of land as such my last and third termination w.e.f. 14.11.2005 is illegal and is liable to set-aside and I am deemed to be in continued service and is entitled to full back wages and with attended benefits same be awarded in the interest of justice”.

3. On notice, the respondents appeared. They filed separate replies controverting the averments made in the petition/statement of claim. The respondent No.1 in his reply has taken the preliminary objections to the effect that the claim petition is not maintainable since the petitioner has not completed 240 days of work in each and every calendar year of his employment. He is estopped from filing the petition by his act, conduct and admissions etc. Earlier, the petitioner had approached the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal by instituting O.A. No.1450/2002 which was decided against him. He (petitioner) is thus precluded to agitate the same matter time and again as it amounts to abuse of the process of law.

On merits, the facts that the petitioner was appointed as a labourer on daily wages on 15.3.2000 and he worked continuously up-to 20th March, 2002 have not been disputed. However, it has been pleaded that the petitioner worked on seasonal basis from time to time subject to the availability of the work and funds at the station. It has been denied that the weekly off and national holidays etc. were not counted as alleged. The services of the petitioner were engaged as and when there was rush of work in the university research farms at Bhota subject to the availability of the budget. Since the petitioner did not complete 240 days of work in any year of his employment, the question of issuing one month's notice to him anterior to the termination of his services does not arise. The services of the petitioner were not retrenched by the university as alleged. Actually, the petitioner was not inclined to work as a contractual labourer and left the job of his own. Pursuant to the judgment dated 05.4.2004 passed by the Hon'ble 355 Administrative Tribunal, necessary letter of contractual appointment for specific mandays @ Rs.1950/- per month was issued in the name of the petitioner. He (petitioner) worked as contractual labourer for specific days in the years 2004 and 2005 as per the requirement of the university at the relevant point of time. No person junior to the petitioner has been retained in service. The services of the petitioner were never disengaged as alleged. He has not applied for re-engagement in spite of three opportunities offered to him. The petitioner had not completed 267 days of continuous service as claimed. No provision of the Act has been infringed. The claim put forth by the petitioner is wrong and misleading.

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed with costs.

4. On similar lines is the reply submitted by the respondent No.2 viz. the Director.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that the respondents cannot wriggle out of the consent given by them before the Hon'ble Administrative Tribunal. The management was putting breaks in service so as to debar him (petitioner) from claiming the benefit of 240 days of continuous service. The respondents are/were indulging in unfair labour practice by hiring new workmen at the cost of the old ones.

6. Per order dated 15.5.2012, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondents is illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR
4. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

9. The petitioner Shri Ishwar Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were engaged by the respondents for seasonal work only and the original application preferred by him before the Hon'ble Administrative Tribunal was rejected. He also denied that on 24.4.2004, the Registrar of the university (respondent No.1) had written a letter to him calling upon him to join the duties which he failed to do. He denied that he did not complete 240 days of work in any year of his employment. Self stated, the respondents did not allow him to work for a continuous period of 240 days. He denied that he left the service of his own and his services were not disengaged by the respondents. Further, he denied that the respondents gave three opportunities to him to join the duties which he failed to do. He does not know that on 30.4.2004, he had written a letter to the respondents informing them that he is joining his duties. He denied that after writing the said letter, he did not join his work because of which he is not entitled to the re-employment etc.

10. Conversely, Sh. R.K. Sood, Senior Assistant of the respondent university stepped into the witness box as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the replies submitted by the respondents.

In the cross-examination, he admitted that the persons whose names appear in Ex. PW1/E are junior to the petitioner and are serving the university. No notice was served upon the petitioner calling upon him to resume the work after he left his duties. Even no inquiry was conducted against him.

11. Ex. PW1/B is the copy of a letter dated 11.10.2000 received from the Registrar of the university by the Regional Research Station, Bhota. As per this letter, the Registrar had directed various officers of the university that they will not allow the daily paid labourers to complete 90 days work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. The Registrar had also directed various officers of the university to ensure that break is given to the daily paid labourers before completing 90 days of work in one spell turn-by-turn.

12. Ex. PW1/C is the copy of the letter dated 19th January, 2001 written by the Associate Director, Bhota Station of the university. Vide this letter also, the Assistant Scientists etc. were directed to give breaks to the daily paid labourers as indicated above.

13. Ex. PW1/D is the list of the workers who are junior to the petitioner.

14. Ex. PW1/E is the copy of the tentative seniority list of daily waged workers etc. of the university as it stood on 31.12.2011.

15. Ex. PW1/F is the copy of the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal in O.A. No.1450/2002 titled as Ishwar Singh vs. Dr. Y.S. Parmar University of Horticulture & Forestry Nauni, District Solan, H.P. & another.

16. Ex. RW1/B is the authority letter issued by the Registrar of the university (respondent No.1) in favour of Shri R.K. Sood (RW1). As per this letter Sh. R.K. Sood (RW1) was authorized to appear in this Court and defend the case on behalf of the university.

17. Ex. RW1/C is the copy of the order dated 05.4.2004 pronounced by the Hon'ble Administrative Tribunal. It corresponds to Ex. PW1/F.

18. Ex. RW1/D is the copy of the memo/appointment letter dated 24.4.2004 written by the Registrar of the university to the petitioner in obedience to the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal.

19. Ex. RW1/E is the copy of an application dated 30.4.2004 written by the petitioner to the Registrar (respondent No.1). As per this letter, the petitioner joined the service and requested the Registrar to mark his presence.

20. Ex. RW1/F is the mandays chart relating to the petitioner.

21. Ex. R1 is the copy of the judgment dated 31.7.2006 rendered by the Hon'ble Himachal Pradesh Administrative Tribunal, Shimla in MA No. 17/2006.

22. Ex. R2 is the copy of an order dated 29.6.2012 passed by a Division Bench of the Hon'ble High Court of Himachal Pradesh in CWP No.4991/2012-J, titled as Sh. Raj Kumar and others vs. Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan and others. The Hon'ble High Court directed the respondents not to disengage the services of the petitioners only for the purpose of denying the benefit of continuous working of 240 days in a year.

23. It is the admitted case of the respondents that the services of the petitioner were engaged as a daily wager on 15.3.2000 and he worked as such at the first instance up-to 20th March, 2002. So far as the disengagement of the petitioner by the respondents w.e.f. 21.3.2002 to 29.06.2004 is concerned, I will like to say that the said controversy has been set at rest by the Hon'ble Administrative Tribunal per order dated 05.4.2004 passed in O.A. No.1450/2002. Exts. PW1/F and RW1/C are the copies of the orders passed by the Hon'ble Tribunal. The Hon'ble Administrative Tribunal had directed that the applicant/petitioner, who is willing to work on contractual basis with the respondent, will be re-engaged. The period when the applicant/petitioner remained out of the job will be counted towards his seniority but he will not be entitled for any back wages. It was also ordered by the Hon'ble Administrative Tribunal that before re-engaging the applicant/petitioner, the respondent university shall communicate the terms and conditions of the employment particularly with regard to the termination clause. The university shall complete the process of selection of the applicant within next 15 days from the date of the order i.e. April 5, 2004.

24. The assertion of the respondents that the services of the petitioner were engaged only for seasonal forestry work from time to time subject to the availability of work and funds does not appear to be true as the same is not supported by any documentary evidence. Otherwise too, if the respondents needed the workmen only for seasonal forestry works, there was no reason or occasion for them to engage new/fresh hands every time. The persons engaged for a particular seasonal forestry work could have been easily re-engaged for the next forestry work. The act and conduct of the respondents seems to be malafide.

25. It is common knowledge that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume his duties after he allegedly left the job. Not only this, there is nothing on the file to suggest that some disciplinary action was initiated against the petitioner by the respondents for his alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

26. From the letters Exts. PW1/B and C, it becomes clear that the university authorities had directed various Field Assistants and Farm Incharges etc. not to allow the daily paid workers to complete 90 days of work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. It was directed that the breaks be given to the daily paid labourers turn-by-turn so that the work of the station does not suffer. These instructions issued by the Registrar etc. of the respondent university are patently illegal and amount to unfair labour practice as per clause 10 of the Vth Schedule appended to the Industrial Disputes Act, 1947 ('the Act' for short).

27. The version of the respondents that the petitioner did not join the duties after the issuance of the appointment letter dated 24.4.2004 (Ex. RW1/D) and in accordance with his (petitioner's) application dated 30.4.2004 (Ex. RW1/E) does not appear to be true since from the monthwise attendance statement of contractual labourers w.e.f. January, 2000 to December, 2005 of the Institute of Biotechnology and Environmental Science, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, P.O. Khagga, District Hamirpur, H.P. it becomes resplendent that the petitioner had worked after the month of April, 2004 from time to time.

28. Shri R.K. Sood (RW1) in his cross-examination admitted that the workmen whose names figure in the seniority list Ex. PW1/E are junior to the petitioner and are serving the university. This shows that the respondents have failed to adhere to the principle of 'last come first go'. Their action contravenes the provisions of Section 25-G of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

29. So far as the payment of back wages to the petitioner is concerned, I will like to say that while testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

30. This issue is decided in favour of the petitioner and against the respondents.

ISSUE No. 2 :

31. Not pressed.

ISSUE No. 3 :

32. All the ingredients of Section 115 of the Indian Evidence Act have neither been pleaded nor proved by the respondents. Their ld. counsel is unable to show me as to how the petitioner is estopped from filing the claim petition by his act and conduct.

33. This issue is also decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE No. 4) :

34. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner w.e.f. 14.11.2005 is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 14.11.2005 except back wages. Parties to bear their own costs.

35. The reference is answered in the aforesaid terms.

36. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

37. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 136/2011

Date of Institution : 28.11.2011

Date of Decision : 08.08.2012

Shri Jai Singh s/o Shri Dumnu Ram, r/o Village Langehar, P.O. Giyun, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Jai Singh s/o Shri Dumnu Ram, Village Langehar, P.O. Giyun, Tehsil Sarkaghat, Distt. Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1998. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
Issue No.2 : Not pressed

Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Jai Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. 22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority

and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 144/2011

Date of Institution : 15.12.2011

Date of Decision : 08.08.2012

Shri Kameshwar Dutt s/o Shri Laskri Ram, r/o Village Dawardu, P.O. Ropadi, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B & R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Kameshwar Dutt s/o Shri Laskri Ram, Village Dawardu, P.O. Ropadi, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified?

If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 24.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Kameshwar Dutt stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 270/2010

Date of Institution : 07.12.2010

Date of Decision : 01.08.2012

Shri Kehar Singh s/o Sh. Chatro, r/o Village Chau, P.O. Sarol, Tehsil & Distt. Chamba,
H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Chamba, Distt. Chamba, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Kehar Singh s/o Sh. Chatro, daily wage workman by the Executive Engineer, HPPWD Division (B&R) Chamba, Distt. Chamba (H.P.) w.e.f. January, 2005 without giving him charge sheet & without conducting enquiry and without following the provisions of the Industrial Disputes Act, 1947 and retaining the junior workmen as alleged by worker, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

“(1) That applicant had already filed an OA(D) 235/2003 before the Hon’ble Tribunal at Dharamshala same was disposed of with a direction to not to give fictional breaks to the applicant and also to not to terminate the daily paid services of applicant only accordance with law.

- (2) That applicant had rendered 10 years continuously services with the respondent deptt. but the respondent deptt. disengaged the daily paid services of applicant vide letter No. PWC-Court case/2004-05-10923-27 dated 29.11.2004 which is annexed as annexure A-1 without giving any opportunity being heard moreover the respondent have taken the wrong meaning of the order passed by the Hon'ble Tribunal in 235/2003 not only this respondent disengaged the other persons who have filed the other OA (D) No.581/2001 Umesh Handa and others versus State of H.P. But with extraneous consideration those persons were re-engaged. Even not only this in O.A. (D) No.183/2000 titled as Tilak Raj and others Versus State of H.P. same order has been passed but these persons are allowed to complete 240 days in each working year and regularized their daily paid services which is clearly violation of the law and policy framed by the respondent deptt. and amounts discrimination with the applicant.
- (3) That Respondent deptt. disengaged the applicant without any rhyme or reason without keeping in mind that some of them are disengaged and re-engaged on the extraneous consideration while some of the juniors are already in services of the respondent deptt. the name of the following are as under:-
- (i) Umesh Handa s/o Krishan Mohalla Chowgan Chamba Tehsil and Distt. Chamba.
 - (ii) Chaman Lal s/o Sh. Bhagi, r/o Vill. Aura Tunda, Tehsil and Distt. Chamba.
 - (iii) Vikarmo s/o Chand, r/o Vill. Padrolli, P.O. Basodhan, Tehsil and Distt. Chamba.
 - (iv) Jarmo s/o Nakul, r/o Vill. Halel, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (v) Beli Ram s/o Raffal, r/o Vill. Sauin, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vi) Tilak Raj s/o Rakhinu Ram, r/o Vill. Biari, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vii) Tilak Raj s/o Teju Ram, r/o Vill. Devidehra, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (viii) Ramesh s/o Bias Dev, r/o Vill. Bhrian, Tehsil and Distt. Chamba.
 - (ix) Bishan Dass s/o Machlu, r/o Vill. Rathiar, Tehsil and Distt. Chamba.
 - (x) Sanjay Kumar s/o Baldev Ram, Mohalla Drobhi, Tehsil and Distt. Chamba, H.P.
 - (xi) Ganesh s/o Brij Lal, r/o Vill. Sarol, P.O. Sarol, Tehsil and Distt. Chamba.
- (4) That respondent deptt. had given fictional breaks to the applicant when he remained in the respondent deptt. Moreover respondent retained the junior persons which is clear cut violation of law and procedure as established in 25 (G&H) of I.D. Act, 1947.

- (5) That respondent are allowing the junior persons to complete the 240 days in each working year and going to regularize their daily paid services but respondent disengaged the applicant without assigning any reason if they allowed these juniors persons then it is discrimination on the part of respondent deptt. It is therefore respectfully prayed that claim petition may kindly be allowed with the benefit of re-engagement alongwith full back wages, seniority, past service benefits and compensation also be given to the applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it stands admitted that the petitioner had instituted O.A. (D) No. 235/2003 before the Hon’ble Himachal Pradesh Administrative Tribunal. The said original application was decided on merits by the Hon’ble Tribunal on 26.2.2004. The copy of the judgment is annexed as annexure R-1 to the reply. It has been owned that the notice dated 29.11.2004 was issued to the petitioner. The notice was issued to the petitioner and other similarly situated workmen due to non-availability of the funds after following the principle of ‘last come first go’. The list of the workmen to whom the notices were issued is appended as annexure R-2 (A) to R-2 (L) to the reply. Annexure R-3 is the notice issued to the petitioner/applicant. For the purpose of regularization, as per the prevailing policy of the Government, a workman has to complete 240 days of continuous service in each and every year for 8/10 years. The petitioner did not complete requisite 240 days of service in any year of his employment. He worked intermittently. The mandays chart of the petitioner is annexure R-4. The issue with regard to the fictional breaks has already been settled by the Hon’ble Tribunal per judgment dated 26.2.2004. No fictional breaks were ever given to the petitioner. The notice (annexure R-3) was issued to the petitioner pursuant to the judgment dated 26.2.2004 of the Hon’ble Tribunal. Despite the issuance of the notice of retrenchment, the petitioner continued to work up-to the month of January, 2005 as per the availability of work and the funds. Muster Roll No. 722, dated 31.12.2004 (annexure R-5) was issued in the name of the petitioner for the month of January, 2005. The petitioner left/abandoned the job of his own w.e.f. 4th January, 2005. Notices dated 29.11.2004 were issued to all the effected workmen keeping in view the budgetary provision at the relevant time. Some workmen whose names have been disclosed by the petitioner worked in continuity with him (respondent) and are senior to the petitioner. The mandays charts of the workmen whose names are there in the petition are attached as annexures R-9 (a) to R-9 (k) to the reply. The petitioner is gainfully employed as a whole time agriculturist. No person junior to the applicant/petitioner has been engaged/re-engaged. Since the petitioner abandoned the job voluntarily, he is precluded from claiming parity with the workmen who worked continuously with him (respondent). It is wrong to say that the petitioner was not allowed to complete 240 days of continuous service deliberately by him (respondent). The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been maintained that the services of S/Sh. Beli Ram, Chaman Lal, Jarmo and Tilak have been re-engaged by the respondent. He (petitioner) has not been re-employed.

5. Per order dated 18.11.2011, following issues were struck by my Id. Predecessor:-

1. Whether the disengagement of the petitioner w.e.f. Jan., 2005 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect? OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? OPR
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No
 Issue No.2 : Not pressed
 Issue No.3 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Sh. Kehar Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. the copy of the notice dated 29.11.2004 issued by the respondent to Sh. Bali Ram daily waged beldar.

In the cross-examination, he admitted that the termination notices were served upon him and others by the respondent. He denied that he did not complete 240 days of work in any year of service. He also denied that he left the job voluntarily in the month of January, 2005 and the respondent kept on issuing the muster rolls in his name up-to January, 2005. He admitted that the present industrial dispute was raised by him in the year 2008. He denied that all the workmen whose names have been mentioned by him in para 3 of the proof affidavit Ex. PW1/A are senior to him. Further, he denied that he left the job to pursue the work of agriculture and is making both the ends meet by doing the said work. 9. Conversely, Shri D.S. Pathania, Executive Engineer, HPPWD Division Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that the petitioner served as a daily wager from June, 1994 to January, 2005.

In the cross-examination, he admitted that S/Sh. Sanjay Kumar and Ganesh Kumar etc. are junior to the petitioner. Self stated, muster rolls were issued in favour of the petitioner but he did not come present. He admitted that no notice was given to the petitioner calling upon him to resume the duties.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the copy of muster roll for the period 01.1.2005 to 31.1.2005 which was issued in favour of the petitioner and others.

12. Ex. RW1/C is the copy of the judgment/order dated February 26, 2004 passed by the Hon'ble Tribunal in O.A. (D) No.235/2003 titled as Naresh Kumar & Ors. vs. State of H.P., through Secretary (B&R) and Ors.

13. Exts. RW1/D1 to D12 are the copies of the notices dated 29.11.2004 served upon the petitioner and others by the respondent.

14. Exts. RW1/E1 to E11 are the details of the working days of S/Sh. Umesh Kumar, Chaman Lal and others.

15. From the statement made by the respondent (RW1), it can be gathered that the petitioner worked intermittently as a daily waged beldar w.e.f. June, 1994 to January, 2005. The version of the petitioner is that his services were wrongly and illegally terminated by the respondent in the month of January, 2005. While denying the said fact, the respondent has pleaded that the petitioner left the job of his own accord and free volition in the month of January, 2005.

16. It is common knowledge that the abandonment has to be proved by the employer like any other fact. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to join his duties. Absence from duty is serious misconduct. There is nothing on the record to show that any disciplinary action was initiated against the petitioner by the respondent because of the alleged willful absence from work of the former. The plea of abandonment put forth by the respondent is not established.

17. From the mandays chart Ex. RW1/A placed on the file, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of 12 calendar months preceding the date/month of his retrenchment i.e. January, 2005 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. It is there in the statement of the respondent (RW1) that S/Sh. Sanjay Kumar and Ganesh Kumar etc. are junior to the petitioner. They are still serving the respondent/department. This indicates that the principle of 'last come first go' has not been adhered to by the respondent. The same is violative of Section 25-G of the Act.

19. Not only this, there is not even an iota of evidence on the file to suggest that an opportunity of re-employment as required under Section 25-H of the Act was afforded to the petitioner by the respondent.

20. Such being the situation, it can be safely said that the respondent has failed to comply with the provisions of Sections 25-G and 25-H of the Act. The disengagement of the petitioner is illegal and unjustified.

21. This issue has been decided accordingly.

ISSUE No. 2 :

22. Not pressed.

ISSUE No. 3 :

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

25. It is/was for the petitioner to prove that during the period he was out of job, he was unemployed. To my mind, a young man like the petitioner will not sit idle. He has failed to discharge the initial onus that during the period he was not in service, he was not gainfully employed.

26. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 4):

27. As a sequel to my findings on the various issues, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. January, 2005 except back wages. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 68/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Shri Krishan Pal s/o Shri Narpat Ram, r/o Village Gwala, P.O. Sandhol, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 16.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Krishan Pal stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
Rajan Gupta,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 52/2012

Date of Institution : 06.01.2012

Date of Decision : 08.08.2012

Smt. Krishni Devi w/o Late Shri Sohan Singh, r/o Village Haryanal, P.O. Tanehad, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Krishni Devi w/o Late Shri Sohan Singh, r/o Village Haryanal, P.O. Tanehad, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1998. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services, the seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along-with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment, the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if

any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 16.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Smt. Krishni Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed.

“Whether retrenchment of services of Shri Lekh Raj s/o Shri Swami Ram, r/o Village Barerdi, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 24.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Lekh Raj stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the

respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 138/2011

Date of Institution : 28.11.2011

Date of Decision : 08.08.2012

Shri Manoj Kumar s/o Shri Mahant Ram, r/o Village Jahanjahal, P.O. Ropadi, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Manoj Kumar s/o Shri Mahant Ram, r/o Village Jahanjahal, P.O. Ropadi, Tehsil Sarkaghat, District Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1998. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior

to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The

fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Manoj Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed

with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5:

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 266/2010

Date of Institution : 18.11.2010

Date of Decision : 01.08.2012

Shri Megho s/o Shri Ratto, r/o Village Chaau, P.O. Sarol, Tehsil & Distt. Chamba, H.P.

. . Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Chamba, Distt. Chamba, H.P.

. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Megho s/o Shri Ratto, daily wage workman by the Executive Engineer, HPPWD Division (B&R) Chamba, Distt. Chamba (H.P.) w.e.f. January, 2005 without serving him charge sheet & without holding enquiry and without following the provisions of the Industrial Disputes Act, 1947 and retaining the junior workmen as alleged by worker, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

“(1) That applicant had already filed an OA(D) 235/2003 before the Hon’ble Tribunal at Dharamshala same was disposed of with a direction to not to give fictional breaks to the applicant and also to not to terminate the daily paid services of applicant only accordance with law.

(2) That applicant had rendered 10 years continuously services with the respondent deptt. but the respondent deptt. disengaged the daily paid services of applicant vide letter No. PWC-Court case/2004-05-10918-22 dated 29.11.2004 which is annexed as annexure A-1 without giving any opportunity being heard moreover the respondent have taken the wrong meaning of the order passed by the Hon’ble Tribunal in 235/2003 not only this respondent disengaged the other persons who have filed the other OA(D) No.581/2001 Umesh Handa and others versus State of H.P. But with extraneous consideration those persons were re-engaged. Even not only this in O.A. (D) No.183/2000 titled as Tilak Raj and others Versus State of H.P. same order has been passed but these persons are allowed to complete 240 days in each working year and regularized their daily paid services which is clearly violation of the law and policy framed by the respondent deptt. and amounts discrimination with the applicant.

- (3) That Respondent deptt. disengaged the applicant without any rhyme or reason without keeping in mind that some of them are dis-engaged and re-engaged on the extraneous consideration while some of the juniors are already in services of the respondent deptt. the name of the following are as under:-
- (i) Umesh Handa s/o Krishan Mohalla Chowgan Chamba Tehsil and Distt. Chamba.
 - (ii) Chaman Lal s/o Sh. Bhagi, r/o Vill. Aura Tunda, Tehsil and Distt. Chamba.
 - (iii) Vikarmo s/o Chand, r/o Vill. Padrolli, P.O. Basodhan, Tehsil and Distt. Chamba.
 - (iv) Jarmo s/o Nakul, r/o Vill. Halel, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (v) Beli Ram s/o Raffal, r/o Vill. Sauin, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vi) Tilak Raj s/o Rakhinu Ram, r/o Vill. Biari, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vii) Tilak Raj s/o Teju Ram, r/o Vill. Devidehra, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (viii) Ramesh s/o Bias Dev, r/o Vill. Bhrian, Tehsil and Distt. Chamba.
 - (ix) Bishan Dass s/o Machlu, r/o Vill. Rathiar, Tehsil and Distt. Chamba.
 - (x) Sanjay Kumar s/o Baldev Ram, Mohalla Drobhi, Tehsil and Distt. Chamba, H.P.
 - (xi) Ganesh s/o Brij Lal, r/o Vill. Sarol, P.O. Sarol, Tehsil and Distt. Chamba.
- (4) That respondent deptt. had given fictional breaks to the applicant when he remained in the respondent deptt. Moreover respondent retained the junior persons which is clear cut violation of law and procedure as established in 25 (G&H) of I.D. Act, 1947.
- (5) That respondent are allowing the junior persons to complete the 240 days in each working year and going to regularize their daily paid services but respondent disengaged the applicant without assigning any reason if they allowed these juniors persons then it is discrimination on the part of respondent deptt. It is therefore respectfully prayed that claim petition may kindly be allowed with the benefit of re-engagement alongwith full back wages, seniority, past service benefits and compensation also be given to the applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it stands admitted that the petitioner had instituted O.A. (D) No. 235/2003 before the Hon'ble Himachal Pradesh Administrative Tribunal. The said original application was decided

on merits by the Hon'ble Tribunal on 26.2.2004. The copy of the judgment is annexed as annexure R-1 to the reply. It has been owned that the notice dated 29.11.2004 was issued to the petitioner. The notice was issued to the petitioner and other similarly situated workmen due to non-availability of the funds after following the principle of 'last come first go'. The list of the workmen to whom the notices were issued is appended as annexure R-2 (a) to R-2 (K) to the reply. Annexure R-3 is the notice issued to the petitioner/applicant. For the purpose of regularization, as per the prevailing policy of the Government a workman has to complete 240 days of continuous service in each and every year for 8/10 years. The petitioner did not complete requisite 240 days of service in any year of his employment. He worked intermittently. The mandays chart of the petitioner is annexure R-4. The issue with regard to the fictional breaks has already been settled by the Hon'ble Tribunal per judgment dated 26.2.2004. No fictional breaks were ever given to the petitioner. The notice (annexure R-3) was issued to the petitioner pursuant to the judgment dated 26.2.2004 of the Hon'ble Tribunal. Despite the issuance of the notice of retrenchment, the petitioner continued to work up-to the month of January, 2005 as per the availability of work and the funds. Muster Roll No. 722 dated 31.12.2004 (annexure R-5) was issued in the name of the petitioner for the month of January, 2005. The petitioner left/abandoned the job of his own w.e.f. 04.1.2005. Notices dated 29.11.2004 were issued to all the effected workmen keeping in view the budgetary provision at the relevant time. Some workmen whose names have been disclosed by the petitioner worked in continuity with him (respondent) and are senior to the petitioner. The mandays charts of the workmen whose names are there in the petition are attached as annexures R-6 (a) to R-6 (L) to the reply. The petitioner is gainfully employed as a whole time agriculturist. No person junior to the applicant/petitioner has been engaged/re-engaged. Since the petitioner abandoned the job voluntarily, he is precluded from claiming parity with the workmen who worked continuously with him (respondent). It is wrong to say that the petitioner was not allowed to complete 240 days of continuous service deliberately by him (respondent). The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been maintained that the services of S/Sh. Beli Ram, Chaman Lal, Jarmo and Tilak have been re-engaged by the respondent. He (petitioner) has not been re-employed.

5. Per order dated 18.11.2011, following issues were struck by my Id. Predecessor:-

1. Whether the disengagement of the petitioner w.e.f. Jan., 2005 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect? OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? OPR
4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No
Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative part of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Sh. Megho stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. the copy of the notice dated 29.11.2004 issued by the respondent to Sh. Bali Ram, daily waged beldar.

In the cross-examination, he admitted that the termination notices were served upon him and others by the respondent. He denied that he did not complete 240 days of work in any year of service. He also denied that he left the job voluntarily in the month of January, 2005 and the respondent kept on issuing the muster rolls in his name up-to January, 2005. He admitted that the present industrial dispute was raised by him in the year 2008. He denied that all the workmen whose names have been mentioned by him in para 3 of the proof affidavit Ex. PW1/A are senior to him. Further, he denied that he left the job to pursue the work of agriculture and is making both the ends meet by doing the said work.

9. Conversely, Shri D.S. Pathania, Executive Engineer, HPPWD Division Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that the petitioner served as a daily wager from September, 1994 to January, 2005.

In the cross-examination, he admitted that S/Sh. Sanjay Kumar and Ganesh Kumar etc. are junior to the petitioner. Self stated, muster rolls were issued in favour of the petitioner but he did not come present. He admitted that no notice was given to the petitioner calling upon him to resume the duties.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the copy of muster roll for the period 01.1.2005 to 31.1.2005 which was issued in favour of the petitioner and others.

12. Ex. RW1/C is the copy of the judgment/order dated February 26, 2004 passed by the Hon'ble Tribunal in O.A. (D) No.235/2003 titled as Naresh Kumar & Ors. vs. State of H.P., through Secretary (B&R) and Ors.

13. Exts. RW1/D1 to D12 are the copies of the notices dated 29.11.2004 served upon the petitioner and others by the respondent.

14. Exts. RW1/E1 to E11 are the details of the working days of S/Sh. Umesh Kumar, Chaman and others.

15. From the statement made by the respondent (RW1), it can be gathered that the petitioner worked intermittently as a daily waged beldar w.e.f. September, 1994 to January, 2005. The version of the petitioner is that his services were wrongly and illegally terminated by the respondent in the month of January, 2005. While denying the said fact, the respondent has pleaded that the petitioner left the job of his own accord and free volition in the month of January, 2005.

16. It is common knowledge that the abandonment has to be proved by the employer like any other fact. Simply because a workman fails to report for duty, it cannot be presumed that he has

left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to join his duties. Absence from duty is serious misconduct. There is nothing on the record to show that any disciplinary action was initiated against the petitioner by the respondent because of the alleged willful absence from work of the former. The plea of abandonment put forth by the respondent is not established.

17. From the mandays chart Ex. RW1/A placed on the file, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of 12 calendar months preceding the date/month of his retrenchment i.e. January, 2005 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. It is there in the statement of the respondent (RW1) that S/Sh. Sanjay Kumar and Ganesh Kumar etc. are junior to the petitioner. They are still serving the respondent/department. This indicates that the principle of 'last come first go' has not been adhered to by the respondent. The same is violative of Section 25-G of the Act.

19. Not only this, there is not even an iota of evidence on the file to suggest that an opportunity of re-employment as required under Section 25-H of the Act was afforded to the petitioner by the respondent.

20. Such being the situation, it can be safely said that the respondent has failed to comply with the provisions of Sections 25-G and 25-H of the Act. The disengagement of the petitioner is illegal and unjustified.

21. This issue has been decided accordingly.

ISSUE No. 2 :

22. Not pressed.

ISSUE No. 3 :

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

25. It is/was for the petitioner to prove that during the period he was out of job, he was unemployed. To my mind, a young man like the petitioner will not sit idle. He has failed to discharge the initial onus that during the period he was not in service, he was not gainfully employed.

26. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 4) :

27. As a sequel to my findings on the various issues, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. January, 2005 except back wages. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 61/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Smt. Mohani Devi w/o Shri Manohar Lal, r/o Village Morla, P.O. Brang, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Mohani Devi w/o Shri Manohar Lal, r/o Village Morla, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer,

H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1999. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services, the seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along-with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- "1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the

effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 16.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP

2. Whether the reference is not maintainable in the present form? OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
Issue No.2 : Not pressed
Issue No.3 : No
Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

8. The petitioner Smt. Mohani Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified

Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5:

19. Not pressed.

ISSUE No. 3:

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6):

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The

respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 154/2012

Date of Institution : 02.3.2012

Date of Decision : 24.8.2012

Shri Mohinder Singh s/o Shri Roshan Lal, r/o Village & P.O. Ropari, Tehsil Barsar, Distt. Hamirpur, H.P. . . *Petitioner.*

Versus

1. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P.

2. The Director, Regional Horticulture & Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondents : Sh. Pawan Kumar Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Mohinder Singh s/o Sh. Roshan Lal, Village & P.O. Ropari, Tehsil Barsar, Distt. Hamirpur, H.P. in the first instance w.e.f.21.3.2002 to 03.10.2004 and finally w.e.f. 01.01.2005 by the 1) The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. 2)The Director, Regional Horticulture & Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P. without

complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, back wages and other service benefits the above workman is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “1. That I was appointed through interview as Labourer on Daily Wages since 16-03-2000 and that I had been continuously been working with the respondent till 20th March 2002.
2. That a certificate awarded to the petitioner by the respondent in regard to his working (Photo copy attached as Annexure A).
3. That the respondent had not counted the weekly off and national and other festival holiday for which the wages have been paid to me by the respondent as per law lay down by the Hon’ble Supreme Court of India in the case of workmen of American Express International Banking Corporation V/s American International Banking Corporation reported in 1985 (67FJR) Page-189.
4. That in the case the national festival holidays and weekly off are added in the actual working day I had worked for more than 240 days of service in each completed year service.
5. That I was nor served with a notice of one month nor I was paid the wages for the same and I was also not paid the compensation as required under section 25-F (b) of the Industrial Disputes Act, 1947, those my termination is void and abinitio.
6. That Hon’ble Tribunal has passed the order dt. 05.04.2004 (Photocopy attached as Annexure-B). Once I had been give continuity of service I am fully entitled to the seniority except back wages.
7. That I cannot be terminated on 01.01.2005 which retaining juniors to me in service which are in Hundred , the names of those shall be disclosed at the time of evidence to avoid tempering of record by the respondents.
8. The lame excuse made by the respondent is that the workmen were temporary causal and seasonal but from the attendance sheet attached would show that I had worked throughout the whole years thus the contention of the respondents are ill-conceived.
9. The management is making pick and choose methods in regard to engagement and disengagement which is unfair labour practice.
10. That I had never been called for re-employment/reengagement as per provided under section 25-H of the Industrial Dispute Act, 1947. But the management is making fresh recruitment/fresh hands which had been admitted by management itself, which is a clear cut contravention of section 25-H of the Industrial Disputes Act, 1947.
11. That in fact there is no project nor there is a project work and no project work had ever been completed but the management by its most nefarious designs had terminated the services of the workmen again and again without complying the

provisions of section 25-G, section 25-H and section 25-F of the Industrial Disputes Act, 1947.

12. On the date of my second termination of 01.01.2005. I had completed 267 days of working and as held by the Hon'ble Supreme Court of India that the appointment made for a specified period again and again when the work of the university is going on smoothly rather it had been expended day by day is an unfair labour practice as held by the Hon'ble Apex Court of India in the case of Haryana State V/s Mamni. Reported in 2006 AIR SEW 2979 Haryana State Electronics Development Corporation Para -9.

“The respondent was appointed from time to time. Her service used to be terminated on the expiry of 89 days on regular basis. However, it is notice that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bonafide. The High Court rejected the contention raised on behalf of the appellant herein stating:

It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been dispute, reveals that the respondent-workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to defeat the right available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner-management to employ the workman repeatedly after a national break, clearly falls within the ambit and scope of unfair labour practice. Thus, it is the settled law of service jurisprudence that whenever work is continuously available, it is not open to the management to split out the work and change the nature of appointment just by giving several appointment letters and term edit as on contract basis. Resultantly all the appointment letters shall be shall be treated as one and it shall be presumed that a workman has continuously worked for more than 240 days with the management”.

13. The management had agreed to give continuity of service and thus I am deemed to be in continuity of service but without back wages. The management had not considered this point at the time of my last termination and thus I am entitled to be service no notice or pay of one month in lieu thereof and compensation payable u/s 25-F (b) of the Industrial Disputes Act, 1947 has neither been paid till date and thus I am deemed to be in service.
14. That junior to me on 01.01.2005 were retained in service in violation to section 25-G of the Industrial Disputes Act, 1947.
15. That my first termination w.e.f. 21.3.2002, 2nd termination w.e.f. 31.12.2004 is illegal, void is against the law of land as such my last and third termination w.e.f. 01.01.2005 is illegal and is liable to set-aside and I am deemed to be in continued service and is entitled to full back wages and with attended benefits same be awarded in the interest of justice”.

3. On notice, the respondents appeared. They filed separate replies controverting the averments made in the petition/statement of claim. The respondent No.1 in his reply has taken the preliminary objections to the effect that the claim petition is not maintainable since the petitioner has not completed 240 days of work in each and every calendar year of his employment. He is estopped from filing the petition by his act, conduct and admissions etc. Earlier the petitioner had

approached the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal by instituting O.A. No.1449/2002 which was decided against him. He (petitioner) is, thus, precluded to agitate the same matter time and again as it amounts to abuse of the process of law.

On merits, the facts that the petitioner was appointed as a labourer on daily wages on 16.3.2000 and he worked continuously up-to 20th March, 2002 have not been disputed. However, it has been pleaded that the petitioner worked on seasonal basis from time to time subject to the availability of the work and funds at the station. It has been denied that the weekly offs and national holidays etc. were not counted as alleged. The services of the petitioner were engaged as and when there was rush of work in the university research farms at Bhota subject to the availability of the budget. Since the petitioner did not complete 240 days of work in any year of his employment, the question of issuing one month's notice to him anterior to the termination of his services does not arise. The services of the petitioner were not retrenched by the university as alleged. Actually, the petitioner was not inclined to work as a contractual labourer and left the job of his own. Pursuant to the judgment dated 05.4.2004 passed by the Hon'ble Administrative Tribunal, necessary letter of contractual appointment for specific mandays @ Rs.1950/- per month was issued in the name of the petitioner. He (petitioner) worked as contractual labourer for specific days in the years 2004 and 2005 as per the requirement of the university at the relevant point of time. No person junior to the petitioner has been retained in service. The services of the petitioner were never disengaged as alleged. He has not applied for re-engagement in spite of three opportunities offered to him. The petitioner had not completed 267 days of continuous service as claimed. No provision of the Act has been infringed. The claim put forth by the petitioner is wrong and misleading.

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed with costs.

4. On similar lines is the reply submitted by the respondent No.2 viz. the Director.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that the respondents cannot wriggle out of the consent given by them before the Hon'ble Administrative Tribunal. The management was putting breaks in service so as to debar him (petitioner) from claiming the benefit of 240 days of continuous service. The respondents are/were indulging in unfair labour practice by hiring new workmen at the cost of the old ones.

6. Per order dated 15.5.2012, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondents is illegal and unjustified as alleged? OPP

2. Whether the petition is not maintainable in the present form? OPR

3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR

4. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

9. The petitioner Shri Mohinder Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were engaged by the respondents for seasonal work only and the original application preferred by him before the Hon'ble Administrative Tribunal was rejected. He also denied that on 24.4.2004, the Registrar of the university (respondent No.1) had written a letter to him calling upon him to join the duties which he failed to do. He denied that he did not complete 240 days of work in any year of his employment. Self stated, the respondents did not allow him to work for a continuous period of 240 days. He denied that he left the service of his own and his services were not disengaged by the respondents. Further, he denied that the respondents gave three opportunities to him to join the duties which he failed to do. He does not know that on 30.4.2004, he had written a letter to the respondents informing them that he is joining his duties. He denied that after writing the said letter he did not join his work because of which he is not entitled to the re-employment etc.

10. Conversely, Sh. R.K. Sood, Senior Assistant of the respondent university stepped into the witness box as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the replies submitted by the respondents.

In the cross-examination, he admitted that the persons whose names appear in Ex. PW1/E are junior to the petitioner and are serving the university. No notice was served upon the petitioner calling upon him to resume the work after he left his duties. Even no inquiry was conducted against him.

11. Ex. PW1/B is the copy of a letter dated 11.10.2000 received from the Registrar of the university by the Regional Research Station, Bhota. As per this letter, the Registrar had directed various officers of the university that they will not allow the daily paid labourers to complete 90 days work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. The Registrar had also directed various officers of the university to ensure that break is given to the daily paid labourers before completing 90 days of work in one spell turn-by-turn.

12. Ex. PW1/C is the copy of the letter dated 19th January, 2001 written by the Associate Director, Bhota Station of the university. Vide this letter also, the Assistant Scientists etc. were directed to give breaks to the daily paid labourers as indicated above.

13. Ex. PW1/D is the list of the workers who are junior to the petitioner.

14. Ex. PW1/E is the copy of the tentative seniority list of daily waged workers etc. of the university as it stood on 31.12.2011.

15. Ex. PW1/F is the copy of the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal in O.A. No.1449/2002 titled as Mohinder Singh vs. Dr. Y.S. Parmar University of Horticulture & Forestry Nauni, District Solan, H.P. & another.

16. Ex. RW1/B is the authority letter issued by the Registrar of the university (respondent No.1) in favour of Shri R.K. Sood (RW1). As per this letter Sh. R.K. Sood (RW1) was authorized to appear in this Court and defend the case on behalf of the university.

17. Ex. RW1/C is the copy of the order dated 05.4.2004 pronounced by the Hon'ble Administrative Tribunal. It corresponds to Ex. PW1/F.

18. Ex. RW1/D is the copy of the memo/appointment letter dated 24.4.2004 written by the Registrar of the university to the petitioner in obedience to the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal.

19. Ex. RW1/E is the copy of an application dated 30.4.2004 written by the petitioner to the Registrar (respondent No.1). As per this letter, the petitioner joined the service and requested the Registrar to mark his presence.

20. Ex. RW1/F is the mandays chart relating to the petitioner.

21. Ex. R1 is the copy of the judgment dated 31.7.2006 rendered by the Hon'ble Himachal Pradesh Administrative Tribunal, Shimla in MA No. 17/2006.

22. Ex. R2 is the copy of an order dated 29.6.2012 passed by a Division Bench of the Hon'ble High Court of Himachal Pradesh in CWP No.4991/2012-J, titled as Sh. Raj Kumar and others vs. Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan and others. The Hon'ble High Court directed the respondents not to disengage the services of the petitioners only for the purpose of denying the benefit of continuous working of 240 days in a year.

23. It is the admitted case of the respondents that the services of the petitioner were engaged as a daily wager on 16.3.2000 and he worked as such at the first instance up-to 20th March, 2002. So far as the disengagement of the petitioner by the respondents w.e.f. 21.3.2002 to 03.10.2004 is concerned, I will like to say that the said controversy has been set at rest by the Hon'ble Administrative Tribunal per order dated 05.4.2004 passed in O.A. No.1449/2002. Exts. PW1/F and RW1/C are the copies of the orders passed by the Hon'ble Tribunal. The Hon'ble Administrative Tribunal had directed that the applicant/petitioner, who is willing to work on contractual basis with the respondent, will be re-engaged. The period when the applicant/petitioner remained out of the job will be counted towards his seniority but he will not be entitled for any back wages. It was also ordered by the Hon'ble Administrative Tribunal that before re-engaging the applicant/petitioner the respondent university shall communicate the terms and conditions of the employment particularly with regard to the termination clause. The university shall complete the process of selection of the applicant within next 15 days from the date of the order i.e. April 5, 2004.

24. The assertion of the respondents that the services of the petitioner were engaged only for seasonal forestry work from time to time subject to the availability of work and funds does not appear to be true as the same is not supported by any documentary evidence. Otherwise too, if the respondents needed the workmen only for seasonal forestry works, there was no reason or occasion for them to engage new/fresh hands every time. The persons engaged for a particular seasonal forestry work could have been easily re-engaged for the next forestry work. The act and conduct of the respondents seems to be malafide.

25. It is common knowledge that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was served

upon the petitioner by the respondents calling upon him to resume his duties after he allegedly left the job. Not only this, there is nothing on the file to suggest that some disciplinary action was initiated against the petitioner by the respondents for his alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

26. From the letters Exts. PW1/B and C, it becomes clear that the university authorities had directed various Field Assistant and Farm Incharge etc. not to allow the daily paid workers to complete 90 days of work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. It was directed that the breaks be given to the daily paid labourers turn-by-turn so that the work of the station does not suffer. These instructions issued by the Registrar etc. of the respondent university are patently illegal and amount to unfair labour practice as per clause 10 of the Vth Schedule appended to the Industrial Disputes Act, 1947 ('the Act' for short).

27. The version of the respondents that the petitioner did not join the duties after the issuance of the appointment letter dated 24.4.2004 (Ex. RW1/D) and in accordance with his (petitioner's) application dated 30.4.2004 (Ex. RW1/E) does not appear to be true since from the monthwise attendance statement of contractual labourers w.e.f. January, 2000 to December, 2005 of the Institute of Biotechnology and Environmental Science, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, P.O. Khagga, District Hamirpur, H.P. it becomes resplendent that the petitioner had worked after the month of April, 2004 from time to time.

28. Shri R.K. Sood (RW1) in his cross-examination admitted that the workmen whose names figure in the seniority list Ex. PW1/E are junior to the petitioner and are serving the university. This shows that the respondents have failed to adhere to the principle of 'last come first go'. Their action contravenes the provisions of Section 25-G of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

29. So far as the payment of back wages to the petitioner is concerned, I will like to say that while testifying in the Court as PW1 the petitioner has given his age as 44 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

30. This issue is decided in favour of the petitioner and against the respondents.

ISSUE No. 2 :

31. Not pressed.

ISSUE No. 3 :

32. All the ingredients of Section 115 of the Indian Evidence Act have neither been pleaded nor proved by the respondents. Their ld. counsel is unable to show me as to how the petitioner is estopped from filing the claim petition by his act and conduct.

33. This issue is also decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE No. 4) :

34. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner w.e.f. 01.1.2005 is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.1.2005 except back wages. Parties to bear their own costs.

35. The reference is answered in the aforesaid terms.

36. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

37. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 4/2010

Date of Institution : 16.1.2010

Date of Decision : 01.08.2012

Shri Naresh Kumar s/o Shri Biddo, r/o Village Jajjar, P.O. Sarol, Tehsil & District Chamba,
H.P. . . *Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division (B&R) Chamba, Distt. Chamba, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Naresh Kumar s/o Shri Biddo by the Executive Engineer, H.P.P.W.D. Division (B&R) Chamba, District Chamba, H.P. w.e.f. January, 2005, and retaining the junior workmen as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “(1) That complaint had already filed an OA(D) 235/2003 before the Hon’ble H.P.A.T. same was disposed of with a direction to not to give the fictional breaks to the applicant and are directed to not terminate the services of applicant only except accordance with law.
- (2) That applicant has rendered 11 years continuously service with the full satisfaction of the respondent deptt. and deptt. concerned disengaged the daily paid services of the applicant vide letter no.pwc-court case/2004-05-10903-0 dated 29.11.2004 without giving an opportunity being heard moreover the respondent have taken the wrong meaning of the order passed by the Hon’ble H.P.A.T. in 235/2003. Not only this the Respondent deptt. disengaged the other persons who had also filed the another O.A. (D) 581/2001 Umesh Handa and others versus State of H.P. and others but with the extraneous consideration those persons are re-engaged. Not only this in O.A. (D) No. 183/2000 Tilak Raj and others v/s State of H.P. and others the same order has passed by the Hon’ble Tribunal and these person are allowed to complete the 240 days and now the deptt. is going to regularize the service of the junior’s persons also who are engaged in the year 1994/1995 whereas applicant is senior to those person who are already engaged. Which is clearly violation of the Law, same is ultra virus and against the policy framed by the respondent deptt.
- (3) That providing the fictional breaks to the applicant amount to unfair labour practice and retaining the junior person is also against the law and procedure. Moreover the applicant is protected under the 25 (G&H) of the Industrial Disputes Act, 1947.
- (4) That respondent deptt. disengaged the applicant without any rhyme or reason without keeping in mind that the junior to the applicant is already working, some of them are disengaged and again re-engaged on extraneous consideration and some of juniors to applicant are already in services, the name of the following are as under:-
- (i) Umesh Handa s/o Sh. Krishan Mohalla Chowgan Chamba Tehsil and Distt. Chamba.
 - (ii) Chaman Lal s/o Sh. Bhagi, r/o Vill. Aura Tunda, Tehsil and Distt. Chamba.
 - (iii) Vikarmo s/o Chand, r/o Vill. Padhrolli, P.O. Basodhan, Tehsil and Distt. Chamba.
 - (iv) Jarmo s/o Nakul, r/o Vill. Halel, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (v) Beli Ram s/o Raffal, r/o Vill. Sauin, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vi) Tilak Raj s/o Rakhinu Ram, r/o Vill. Biari, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vii) Tilak Raj s/o Teju Ram, r/o Vill. Devidehra, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (viii) Ramesh s/o Bias Dev, r/o Vill. Bhrian, Tehsil and Distt. Chamba.

(ix) Bishan Dass s/o Machlu, r/o Vill. Rathiar, Tehsil and Distt. Chamba.

(x) Sanjay Kumar s/o Baldev Ram, Mohalla Drobhi, Tehsil and Distt. Chamba, H.P. are retained and allowed to complete 240 days in each working year and applicant disengaged without assigning any reason which is not bonafide if they allowed these persons who are engaged in 1994/1995 with the same criteria then there is no question arise to disengage the applicant. Moreover applicant rendered 11 year continuous service with the respondent deptt. It is therefore, respectfully prayed that applicant may kindly be re-engaged with full back wages seniority and the past service benefits and compensation also be given to the applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it stands admitted that the petitioner had instituted O.A. (D) No. 235/2003 before the Hon'ble Himachal Pradesh Administrative Tribunal. The said original application was decided on merits by the Hon'ble Tribunal on 26.2.2004. The copy of the judgment is annexed as annexure R-1 to the reply. It has been owned that the notice dated 29.11.2004 was issued to the petitioner. The notice was issued to the petitioner and other similarly situated workmen due to non-availability of the funds after following the principle of 'last come first go'. The list of the workmen to whom the notices were issued is appended as annexure R-2 (a) to R-2 (K) to the reply. Annexure R-3 is the notice issued to the petitioner/applicant. For the purpose of regularization, as per the prevailing policy of the Government a workman has to complete 240 days of continuous service in each and every year for 8/10 years. The petitioner did not complete requisite 240 days of service in any year of his employment. He worked intermittently. The mandays chart of the petitioner is annexure R-4. The issue with regard to the fictional breaks has already been settled by the Hon'ble Tribunal per judgment dated 26.2.2004. No fictional breaks were ever given to the petitioner. The notice (annexure R-3) was issued to the petitioner pursuant to the judgment dated 26.2.2004 of the Hon'ble Tribunal. Despite the issuance of the notice of retrenchment, the petitioner continued to work up-to the month of January, 2005 as per the availability of work and the funds. The petitioner left/abandoned the job of his own w.e.f. 01/2005. Notices dated 29.11.2004 were issued to all the effected workmen keeping in view the budgetary provision at the relevant time. Some workmen whose names have been disclosed by the petitioner worked in continuity with him (respondent) and are senior to the petitioner. The mandays charts of the workmen whose names are there in the petition are attached as annexures R-5 (a) to R-5 (L) to the reply. The petitioner is gainfully employed as a whole time agriculturist. No person junior to the applicant/petitioner has been engaged/re-engaged. Since the petitioner abandoned the job voluntarily, he is precluded from claiming parity with the workmen who worked continuously with him (respondent). It is wrong to say that the petitioner was not allowed to complete 240 days of continuous service deliberately by him (respondent). The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been maintained that the services of S/Sh. Beli Ram, Chaman Lal, Jarmo and Tilak have been re-engaged by the respondent. He (petitioner) has not been re-employed.

5. Per order dated 30.9.2011, following issues were struck by my Id. Predecessor:-

1. Whether the disengagement of the petitioner w.e.f. Jan., 2005 and eventually the notice issued dated 29.11.2004 is violative of the provision of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect thereto? OPR
3. Whether the reference is bad by the vice of delay and laches as alleged. If so, to what effect thereto? OPR
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No
 Issue No.2 : Not pressed
 Issue No.3 : No
 Relief. : Claim petition allowed in part vide operative part of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

8. The petitioner Sh. Naresh Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. the copy of the notice dated 29.11.2004 issued by the respondent to Sh. Bali Ram daily waged beldar.

In the cross-examination, he admitted that the termination notices were served upon him and others by the respondent. He denied that he did not complete 240 days of work in any year of service. He also denied that he left the job voluntarily in the month of January, 2005 and the respondent kept on issuing the muster rolls in his name up-to January, 2005. He admitted that the present industrial dispute was raised by him in the year 2008. He denied that all the workmen whose names have been mentioned by him in para 3 of the proof affidavit Ex. PW1/A are senior to him. Further, he denied that he left the job to pursue the work of agriculture and is making both the ends meet by doing the said work.

9. Conversely, Shri D.S. Pathania, Executive Engineer, HPPWD Division Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that the petitioner served as a daily wager from November, 1994 to January, 2005.

In the cross-examination, he admitted that S/Sh. Sanjay Kumar and Ganesh Kumar etc. are junior to the petitioner. Self stated, muster rolls were issued in favour of the petitioner but he did not come present. He admitted that no notice was given to the petitioner calling upon him to resume the duties.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the copy of muster roll for the period 01.1.2005 to 31.1.2005 which was issued in favour of the petitioner and others.

12. Ex. RW1/C is the copy of the judgment/order dated February 26, 2004 passed by the Hon'ble Tribunal in O.A. (D) No.235/2003 titled as Naresh Kumar & Ors. vs. State of H.P., through Secretary (B&R) and Ors.

13. Exts. RW1/D1 to D12 are the copies of the notices dated 29.11.2004 served upon the petitioner and others by the respondent.

14. Exts. RW1/E1 to E11 are the details of the working days of S/Sh. Umesh Kumar, Chaman and others.

15. From the statement made by the respondent (RW1), it can be gathered that the petitioner worked intermittently as a daily waged beldar w.e.f. November, 1994 to January, 2005. The version of the petitioner is that his services were wrongly and illegally terminated by the respondent in the month of January, 2005. While denying the said fact, the respondent has pleaded that the petitioner left the job of his own accord and free volition in the month of January, 2005.

16. It is common knowledge that the abandonment has to be proved by the employer like any other fact. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to join his duties. Absence from duty is serious misconduct. There is nothing on the record to show that any disciplinary action was initiated against the petitioner by the respondent because of the alleged willful absence from work of the former. The plea of abandonment put forth by the respondent is not established.

17. From the mandays chart Ex. RW1/A placed on the file, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of 12 calendar months preceding the date/month of his retrenchment i.e. January, 2005 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. It is there in the statement of the respondent (RW1) that S/Sh. Sanjay Kumar and Ganesh Kumar etc. are junior to the petitioner. They are still serving the respondent/department. This indicates that the principle of 'last come first go' has not been adhered to by the respondent. The same is violative of Section 25-G of the Act.

19. Not only this, there is not even an iota of evidence on the file to suggest that an opportunity of re-employment as required under Section 25-H of the Act was afforded to the petitioner by the respondent.

20. Such being the situation, it can be safely said that the respondent has failed to comply with the provisions of Sections 25-G and 25-H of the Act. The disengagement of the petitioner is illegal and unjustified.

21. This issue has been decided accordingly.

ISSUE No. 2 :

22. Not pressed.

ISSUE No. 3 :

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

25. It is/was for the petitioner to prove that during the period he was out of job, he was unemployed. To my mind, a young man like the petitioner will not sit idle. He has failed to discharge the initial onus that during the period he was not in service, he was not gainfully employed.

26. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 4):

27. As a sequel to my findings on the various issues, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. January, 2005 except back wages. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 256/2010

Date of Institution : 25.10.2010

Date of Decision : 01.08.2012

Shri Naresh Kumar s/o Shri Mohni Ram, r/o Village Gailla, P.O. Sarol, Tehsil & Distt. Chamba, H.P. . . Petitioner.

Versus

The Executive Engineer, HPPWD Division (B&R) Chamba, Distt. Chamba, H.P. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Akshay Jaryal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Naresh Kumar s/o Sh. Mohni Ram by the Executive Engineer, HPPWD (B&R) Division Chamba, Distt. Chamba, (H.P.) w.e.f. December, 2004 and retaining the junior workmen as alleged by worker, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “(1) That applicant had already filed an OA(D) 232/2003 before the Hon’ble Tribunal at Dharamshala same was disposed of with a direction to not to give fictional breaks to the applicant and also to not to terminate the daily paid services of applicant only accordance with law.
- (2) That applicant had rendered 10 years continuously services with the respondent deptt. but the respondent deptt. disengaged the daily paid services of applicant vide letter no. PWC-Court case/2004-05-10973-77 dated 29.11.2004 which is annexed as annexure A-1 without giving any opportunity being heard moreover the respondent have taken the wrong meaning of the order passed by the Hon’ble Tribunal in 232/2003 not only this respondent disengaged the other persons who have filed the other OA(D) No.581/2001 Umesh Handa and others versus State of H.P. But with extraneous consideration those persons were re-engaged. Even not only this in O.A. (D) No.183/2000 titled as Tilak Raj and others Versus State of H.P. same order has been passed but these persons are allowed to complete 240 days in each working year and regularized their daily paid services which is clearly violation of the law and policy framed by the respondent deptt. and amounts discrimination with the applicant.
- (3) That Respondent deptt. disengaged the applicant without any rhyme or reason without keeping in mind that some of them are dis-engaged and re-engaged on the extraneous consideration while some of the juniors are already in services of the respondent deptt. the name of the following are as under:-
 - (i) Umesh Handa s/o Krishan Mohalla Chowgan Chamba Tehsil and Distt. Chamba.

- (ii) Chaman Lal s/o Sh. Bhagi, r/o Vill. Aura Tunda, Tehsil and Distt. Chamba.
 - (iii) Vikarmo s/o Chand, r/o Vill. Padrolli, P.O. Basodhan, Tehsil and Distt. Chamba.
 - (iv) Jarmo s/o Nakul, r/o Vill. Halel, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (v) Beli Ram s/o Raffal, r/o Vill. Sauin, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vi) Tilak Raj s/o Rakhinu Ram, r/o Vill. Biari, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (vii) Tilak Raj s/o Teju Ram, r/o Vill. Devidehra, P.O. Rathiar, Tehsil and Distt. Chamba.
 - (viii) Ramesh s/o Bias Dev, r/o Vill. Bhrian, Tehsil and Distt. Chamba.
 - (ix) Bishan Dass s/o Machlu, r/o Vill. Rathiar, Tehsil and Distt. Chamba.
 - (x) Sanjay Kumar s/o Baldev Ram, Mohalla Drobhi, Tehsil and Distt. Chamba, H.P.
 - (xi) Ganesh s/o Brij Lal, r/o Vill. Sarol, P.O. Sarol, Tehsil and Distt. Chamba.
- (4) That respondent deptt. had given fictional breaks to the applicant when he remained in the respondent deptt. Moreover respondent retained the junior persons which is clear cut violation of law and procedure as established in 25 (G&H) of I.D. Act, 1947.
- (5) That respondent are allowing the junior persons to complete the 240 days in each working year and going to regularize their daily paid services but respondent disengaged the applicant without assigning any reason if they allowed these juniors persons then it is discrimination on the part of respondent deptt. It is therefore respectfully prayed that claim petition may kindly be allowed with the benefit of re-engagement alongwith full back wages, seniority, past service benefits and compensation also be given to the applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the petition is not maintainable in the present form. The same is bad on account of delay and laches on the part of the petitioner.

On merits, it stands admitted that the petitioner had instituted O.A. (D) No. 232/2003 before the Hon'ble Himachal Pradesh Administrative Tribunal. The said original application was decided on merits by the Hon'ble Tribunal on 26.2.2004. The copy of the judgment is annexed as annexure R-1 to the reply. It has been owned that the notice dated 29.11.2004 was issued to the petitioner. The notice was issued to the petitioner and other similarly situated workmen due to non-availability of the funds after following the principle of 'last come first go'. The list of the workmen to whom the notices were issued is appended as annexure R-2 (a) to R-2 (K) to the reply. Annexure R-3 is the notice issued to the petitioner/applicant. For the purpose of regularization, as per the prevailing policy of the Government a workman has to complete 240 days of continuous service in each and every year for 8/10 years. The petitioner did not complete requisite 240 days of service in any year

of his employment. He worked intermittently. The mandays chart of the petitioner is annexure R-4. The issue with regard to the fictional breaks has already been settled by the Hon'ble Tribunal per judgment dated 26.2.2004. No fictional breaks were ever given to the petitioner. The notice (annexure R-3) was issued to the petitioner pursuant to the judgment dated 26.2.2004 of the Hon'ble Tribunal. Despite the issuance of the notice of retrenchment, the petitioner continued to work up-to the month of January, 2005 as per the availability of work and funds. Muster Roll No. 722, dated 31.12.2004 (annexure R-5) was issued in the name of the petitioner for the month of January, 2005. The petitioner left/abandoned the job of his own w.e.f. 2nd January, 2005. Notices dated 29.11.2004 were issued to all the effected workmen keeping in view the budgetary provision at the relevant time. Some workmen whose names have been disclosed by the petitioner worked in continuity with him (respondent) and are senior to the petitioner. The mandays charts of the workmen whose names are there in the petition are attached as annexures R-5 (a) to R-5(L) to the reply. The petitioner is gainfully employed as a whole time agriculturist. No person junior to the applicant/petitioner has been engaged/re-engaged. Since the petitioner abandoned the job voluntarily, he is precluded from claiming parity with the workmen who worked continuously with him (respondent). It is wrong to say that the petitioner was not allowed to complete 240 days of continuous service deliberately by him (respondent). The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been pleaded that he has been discriminated by the respondent/department. S/Sh. Beli Ram, Chaman Lal, Jarmo and Tilak have been re-engaged by the respondent. He never left the service as alleged. 5. Per order dated 18.11.2011, below given issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. December, 2004 is violative of the provisions of Sections 25-F, 25-G & 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect? OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? OPR
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Yes
 Issue No.3 : Not pressed
 Relief. : Claim petition dismissed vide operative part of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2 :

8. Being interlinked and to avoid the repetition, both these issues are taken up together for adjudication.

9. The petitioner Sh. Naresh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the notice dated 29.11.2004 was given to him as per the orders of the Hon'ble Tribunal due to the non-availability of work and funds. He admitted that the retrenchment notices were given to other workmen also. He denied that he did not complete 240 days of work in any year of his employment. He admitted that he had worked with the respondent/department in the month of January, 2005. He denied that he left the job of his own and the muster roll for the entire month of January, 2005 was issued in his name by the respondent. He refuted that the workmen, whose names have been divulged by him are senior to him and he did not attend to his duties regularly as he used to remain busy in agricultural work.

10. Conversely, Shri D.S. Pathania, Executive Engineer, HPPWD Division, Chamba (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that Sh. Sanjay Kumar and Sh. Ganesh Kumar etc. are junior to the petitioner. He also admitted that the persons junior to the petitioner are serving under him.

11. Ex. PW1/B is the notice of retrenchment dated 29.11.2004 sent by the respondent to one Shri Bali Ram.

12. Ex. RW1/A is the mandays chart relating to the petitioner.

13. Ex. RW1/B is the copy of muster roll for the period 01.1.2005 to 31.1.2005 which was issued in favour of the petitioner and others.

14. Ex. RW1/C is the copy of the judgment/order dated February 26, 2004 passed by the Hon'ble Tribunal in O.A. (D) No.232/2003 titled as Naresh Kumar & Ors. vs. State of H.P., through Secretary (B&R) and Ors.

15. Exts. RW1/D1 to D12 are the copies of the notices dated 29.11.2004 served upon the petitioner and others by the respondent.

16. Exts. RW1/E1 to E11 are the details of the working days of S/Sh. Umesh Kumar, Chaman and others.

17. It is the basic law that this Court cannot travel beyond the terms of the reference. Therefore, the question of providing the fictional breaks, if any, to the petitioner by the respondent cannot be gone into by this Court.

18. The petitioner (PW1) in his cross-examination admitted that he had served the respondent/department in the month of January, 2005. The said fact finds support from the mandays chart Ex. RW1/A. It is not the case of the petitioner that the mandays chart produced by the respondent is incorrect. Ex. RW1/B i.e. the copy of the muster roll from 01.1.2005 to 31.1.2005 also unfolds that the petitioner had served the respondent/department in the month of January, 2005. Since the petitioner worked under the respondent up-to the month of January, 2005, the question of termination of his services w.e.f. December, 2004 (as per reference) does not arise.

19. That being so, I have no hesitation to conclude that the services of the petitioner were not dispensed with by the respondent in the month of December, 2004. The claim put forth by the petitioner is not maintainable. He is, thus, not entitled to any relief.

20. These issues are decided against the petitioner and in favour of his opponent.

ISSUE No. 3:

21. Not pressed.

RELIEF (ISSUE No. 4):

22. As a sequel to my findings on the various issues, the instant reference/claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 31/2012

Date of Institution : 02.1.2012

Date of Decision : 08.08.2012

Shri Nek Ram S/o Shri Safria Ram, r/o Village Hukal, P.O. Longni, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Nek Ram s/o Shri Safria Ram, r/o Village Hukal, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1998. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

8. The petitioner Shri Nek Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified

Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3:

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6):

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is

also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
Rajan Gupta,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 58/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Smt. Panjabi Devi w/o Shri Ram Saran, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Panjabi Devi w/o Shri Ram Saran, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1999. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services, the seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment, the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- "1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 16.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

8. The petitioner Smt. Panjabi Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the

respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 139/2011

Date of Institution : 28.11.2011

Date of Decision : 08.08.2012

Shri Partap Singh s/o Shri Jai Singh, r/o Village Bhadoo, P.O. Gharwasra, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P.
. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Partap Singh s/o Shri Jai Singh, r/o Village Bhadoo, P.O. Gharwasra, Tehsil Sarkaghat, Distt. Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior

to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The

fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Partap Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed

with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) ;

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 66/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Shri Pawan Kumar s/o Shri Harbhaj, r/o Village Kumharada, P.O. Pehad, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . Petitioner.

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P.
. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Pawan Kumar s/o Shri Harbhaj, Village Kumharada, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1998. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent.

The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 16.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Pawan Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj

(husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 149/2011

Date of Institution : 15.12.2011

Date of Decision : 08.08.2012

Shri Ramesh Chand s/o Shri Keshav Ram, r/o Village Saraskan, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Ramesh Chand s/o Shri Keshav Ram, r/o Village Saraskan, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1998. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 24.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Ramesh Chand stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 146/2011

Date of Institution : 15.12.2011

Date of Decision : 08.08.2012

Shri Randhir Barwal s/o Shri Ruvel Chand, r/o Village Kaltri, P.O. Kothuwan, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B & R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Randhir Barwal s/o Shri Ruvel Chand, r/o Village Kaltri, P.O. Kothuwan, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1:

8. The petitioner Shri Randhir Barwal stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed.

The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 49/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Shri Ravi Chand s/o Shri Kundan Lal, r/o Village Bhri, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Ravi Chand s/o Sh. Kundan Lal, Village Bhri, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 16.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Ravi Chand stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not

only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOURCOURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 153/2012

Date of Institution : 02.3.2012

Date of Decision : 24.8.2012

Shri Ravi Dutt s/o Shri Bansi Lal, r/o Village Lanjayana, P.O. Gahlian-Kolwin, Distt. Hamirpur, H.P. . . *Petitioner.*

Versus

1. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P.

2. The Director, Regional Horticulture & Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P. . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondents : Sh. Pawan Kumar Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ravi Dutt s/o Shri Bansi Lal, Village Lanjayana, P.O. Gahlian-Kolwin, Distt. Hamirpur, H.P. in the first instance w.e.f.21.3.2002 to 03.10.2004 and finally w.e.f. 14.11.2005 by the 1) The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. 2)The Director, Regional Horticulture & Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, back wages and other service benefits the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “1. That I was appointed through interview as Labourer on Daily Wages since 6-03-2000 and that I had been continuously been working with the respondent till 20th March 2002.
2. That a certificate awarded to the petitioner by the respondent in regard to his working (Photo copy attached as Annexure A).
3. That the respondent had not counted the weekly off and national and other festival holiday for which the wages have been paid to me by the respondent as per law lay down by the Hon’ble Supreme Court of India in the case of workmen of American Express International Banking Corporation V/s American International Banking Corporation reported in 1985 (67FJR) Page-189.
4. That in the case the national festival holidays and weekly off are added in the actual working day I had worked for more than 240 days of service in each completed year service.
5. That I was nor served with a notice of one month nor I was paid the wages for the same and I was also not paid the compensation as required under section 25-F (b) of the Industrial Disputes Act, 1947, those my termination is void and abinitio.
6. That Hon’ble Tribunal has passed the order dt. 05.04.2004 (Photocopy attached as Annexure-B). Once I had been give continuity of service I am fully entitled to the seniority except back wages.
7. That I cannot be terminated on 01.01.2005 which retaining juniors to me in service which are in Hundred , the names of those shall be disclosed at the time of evidence to avoid tempering of record by the respondents.
8. The lame excuse made by the respondent is that the workmen were temporary causal and seasonal but from the attendance sheet attached would show that I had worked throughout the whole years thus the contention of the respondents are ill-conceived.
9. The management is making pick and choose methods in regard to engagement and disengagement which is unfair labour practice.
10. That I had never been called for re-employment/reengagement as per provided under section 25-H of the Industrial Dispute Act, 1947. But the management is making fresh recruitment/fresh hands which had been admitted by management itself, which is a clear cut contravention of section 25-H of the Industrial Disputes Act, 1947.
11. That in fact there is no project nor there is a project work and no project work had ever been completed but the management by its most nefarious designs had terminated the services of the workmen again and again without complying the provisions of section 25-G, section 25-H and section 25-F of the Industrial Disputes Act, 1947.
12. On the date of my second termination of 14.11.2005. I had completed 267 days of working and as held by the Hon’ble Supreme Court of India that the appointments made for a specified period again and again when the work of the university is

going on smoothly rather it had been expended day by day is an unfair labour practice as held by the Hon'ble Apex Court of India in the case of Haryana State V/s Mamni. Reported in 2006 AIR SEW 2979 Haryana State Electronics Development Corporation Para -9.

“The respondent was appointed from time to time. Her service used to be terminated on the expiry of 89 days on regular basis. However, it is notice that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bonafide. The High Court rejected the contention raised on behalf of the appellant herein stating:

It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been dispute, reveals that the respondent-workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to defeat the right available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner-management to employ the workman repeatedly after a national break, clearly falls within the ambit and scope of unfair labour practice.

Thus, it is the settled law of service jurisprudence that whenever work is continuously available, it is not open to the management to split out the work and change the nature of appointment just by giving several appointment letters and term edit as on contract basis. Resultantly all the appointment letters shall be treated as one and it shall be presumed that a workman has continuously worked for more than 240 days with the management”.

13. The management had agreed to give continuity of service and thus I am deemed to be in continuity of service but without back wages. The management had not considered this point at the time of my last termination and thus I am entitled to be service no notice or pay of one month in lieu thereof and compensation payable u/s 25-F (b) of the Industrial Disputes Act, 1947 has neither been paid till date and thus I am deemed to be in service.
14. That junior to me on 01.01.2005 were retained in service in violation to section 25-G of the Industrial Disputes Act, 1947.
15. That my first termination w.e.f. 21.3.2002, 2nd termination w.e.f. 03.10.2004 is illegal, void is against the law of land as such my last and third termination w.e.f. 14.11.2005 is illegal and is liable to set-aside and I am deemed to be in continued service and is entitled to full back wages and with attended benefits same be awarded in the interest of justice”.

3. On notice, the respondents appeared. They filed separate replies controverting the averments made in the petition/statement of claim. The respondent No.1 in his reply has taken the preliminary objections to the effect that the claim petition is not maintainable since the petitioner has not completed 240 days of work in each and every calendar year of his employment. He is estopped from filing the petition by his act, conduct and admissions etc. Earlier the petitioner had approached the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal by instituting O.A. No.1455/2002 which was decided against him. He (petitioner) is thus precluded to agitate the same matter time and again as it amounts to abuse of the process of law.

On merits, the facts that the petitioner was appointed as a labourer on daily wages on 6.3.2000 and he worked continuously up-to 20th March, 2002 have not been disputed. However, it

has been pleaded that the petitioner worked on seasonal basis from time to time subject to the availability of the work and funds at the station. It has been denied that the weekly off and national holidays etc. were not counted as alleged. The services of the petitioner were engaged as and when there was rush of work in the university research farms at Bhota subject to the availability of the budget. Since the petitioner did not complete 240 days of work in any year of his employment, the question of issuing one month's notice to him anterior to the termination of his services does not arise. The services of the petitioner were not retrenched by the university as alleged. Actually, the petitioner was not inclined to work as a contractual labourer and left the job of his own. Pursuant to the judgment dated 05.4.2004 passed by the Hon'ble Administrative Tribunal, necessary letter of contractual appointment for specific mandays @ Rs.1950/- per month was issued in the name of the petitioner. He (petitioner) worked as contractual labourer for specific days in the years 2004 and 2005 as per the requirement of the university at the relevant point of time. No person junior to the petitioner has been retained in service. The services of the petitioner were never disengaged as alleged. He has not applied for re-engagement in spite of three opportunities offered to him. The petitioner had not completed 267 days of continuous service as claimed. No provision of the Act has been infringed. The claim put forth by the petitioner is wrong and misleading.

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed with costs.

4. On similar lines is the reply submitted by the respondent No.2 viz. the Director.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that the respondents cannot wriggle out of the consent given by them before the Hon'ble Administrative Tribunal. The management was putting breaks in service so as to debar him (petitioner) from claiming the benefit of 240 days of continuous service. The respondents are/were indulging in unfair labour practice by hiring new workmen at the cost of the old ones.

6. Per order dated 15.5.2012, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondents is illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? OPR
4. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

9. The petitioner Shri Ravi Dutt stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were engaged by the respondents for seasonal work only and the original application preferred by him before the Hon'ble Administrative Tribunal was rejected. He also denied that on 24.4.2004, the Registrar of the university (respondent No.1) had written a letter to him calling upon him to join the duties which he failed to do. He admitted that he did not complete 240 days of work in any year of his employment. Self stated, the respondents did not allow him to work for a continuous period of 240 days. He denied that he left the service of his own and his services were not disengaged by the respondent. Further, he denied that the respondents gave three opportunities to him to join the duties which he failed to do. He does not know that on 30.4.2004, he had written a letter to the respondents informing them that he is joining his duties. He denied that after writing the said letter, he did not join his work because of which he is not entitled to the reemployment etc.

10. Conversely, Sh. R.K. Sood, Senior Assistant of the respondent university stepped into the witness box as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the replies submitted by the respondents.

In the cross-examination, he admitted that the persons whose names appear in Ex. PW1/E are junior to the petitioner and are serving the university. No notice was served upon the petitioner calling upon him to resume the work after he left his duties. Even no inquiry was conducted against him.

11. Ex. PW1/B is the copy of a letter dated 11.10.2000 received from the Registrar of the university by the Regional Research Station, Bhota. As per this letter, the Registrar had directed various officers of the university that they will not allow the daily paid labourers to complete 90 days work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. The Registrar had also directed various officers of the university to ensure that break is given to the daily paid labourers before completing 90 days of work in one spell turn-by-turn.

12. Ex. PW1/C is the copy of the letter dated 19th January, 2001 written by the Associate Director, Bhota Station of the university. Vide this letter also, the Assistant Scientists etc. were directed to give breaks to the daily paid labourers as indicated above.

13. Ex. PW1/D is the list of the workers who are junior to the petitioner.

14. Ex. PW1/E is the copy of the tentative seniority list of daily waged workers etc. of the university as it stood on 31.12.2011.

15. Ex. PW1/F is the copy of the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal in O.A. No.1455/2002 titled as Ravi Dutt vs. Dr. Y.S. Parmar University of Horticulture & Forestry Nauni, District Solan, H.P. & another.

16. Ex. RW1/B is the authority letter issued by the Registrar of the university (respondent No.1) in favour of Shri R.K. Sood (RW1). As per this letter, Sh. R.K. Sood (RW1) was authorized to appear in this Court and defend the case on behalf of the university.

17. Ex. RW1/C is the copy of the order dated 05.4.2004 pronounced by the Hon'ble Administrative Tribunal. It corresponds to Ex. PW1/F.

18. Ex. RW1/D is the copy of the memo/appointment letter dated 24.4.2004 written by the Registrar of the university to the petitioner in obedience to the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal.

19. Ex. RW1/E is the copy of an application dated 30.4.2004 written by the petitioner to the Registrar (respondent No.1). As per this letter, the petitioner joined the service and requested the Registrar to mark his presence.

20. Ex. RW1/F is the mandays chart relating to the petitioner.

21. Ex. R1 is the copy of the judgment dated 31.7.2006 rendered by the Hon'ble Himachal Pradesh Administrative Tribunal, Shimla in MA No. 17/2006.

22. Ex. R2 is the copy of an order dated 29.6.2012 passed by a Division Bench of the Hon'ble High Court of Himachal Pradesh in CWP No.4991/2012-J, titled as Sh. Raj Kumar and others vs. Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan and others. The Hon'ble High Court directed the respondents not to disengage the services of the petitioners only for the purpose of denying the benefit of continuous working of 240 days in a year.

23. It is the admitted case of the respondents that the services of the petitioner were engaged as a daily wager on 06.3.2000 and he worked as such at the first instance up-to 20th March, 2002. So far as the disengagement of the petitioner by the respondents w.e.f. 21.3.2002 to 03.10.2004 is concerned, I will like to say that the said controversy has been set at rest by the Hon'ble Administrative Tribunal per order dated 05.4.2004 passed in O.A. No.1455/2002. Exts. PW1/F and RW1/C are the copies of the orders passed by the Hon'ble Tribunal. The Hon'ble Administrative Tribunal had directed that the applicant/petitioner, who is willing to work on contractual basis with the respondent, will be re-engaged. The period when the applicant/petitioner remained out of the job will be counted towards his seniority but he will not be entitled for any back wages. It was also ordered by the Hon'ble Administrative Tribunal that before re-engaging the applicant/petitioner the respondent university shall communicate the terms and conditions of the employment particularly with regard to the termination clause. The university shall complete the process of selection of the applicant within next 15 days from the date of the order i.e. April 5, 2004.

24. The assertion of the respondents that the services of the petitioner were engaged only for seasonal forestry work from time to time subject to the availability of work and funds does not appear to be true as the same is not supported by any documentary evidence. Otherwise too, if the respondents needed the workmen only for seasonal forestry works, there was no reason or occasion for them to engage new/fresh hands every time. The persons engaged for a particular seasonal forestry work could have been easily re-engaged for the next forestry work. The act and conduct of the respondents seems to be malafide.

25. It is common knowledge that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume his duties after he allegedly left the job. Not only this, there is nothing on the file to suggest that some disciplinary action was initiated against the petitioner by the respondents for his alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

26. From the letters Exts. PW1/B and C, it becomes clear that the university authorities had directed various Field Assistants and Farm Incharges etc. not to allow the daily paid workers to complete 90 days of work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. It was directed that the breaks be given to the daily paid labourers turn-by-turn so that the work of the station does not suffer. These instructions issued by the Registrar etc. of the respondent university are patently illegal and amount to unfair labour practice as per clause 10 of the Vth Schedule appended to the Industrial Disputes Act, 1947 ('the Act' for short).

27. The version of the respondents that the petitioner did not join the duties after the issuance of the appointment letter dated 24.4.2004 (Ex. RW1/D) and in accordance with his (petitioner's) application dated 30.4.2004 (Ex. RW1/E) does not appear to be true since from the monthwise attendance statement of contractual labourers w.e.f. January, 2000 to December, 2005 of the Institute of Biotechnology and Environmental Science, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, P.O. Khagga, District Hamirpur, H.P. it becomes resplendent that the petitioner had worked after the month of April, 2004 from time to time.

28. Shri R.K. Sood (RW1) in his cross-examination admitted that the workmen whose names figure in the seniority list Ex. PW1/E are junior to the petitioner and are serving the university. This shows that the respondents have failed to adhere to the principle of 'last come first go'. Their action contravenes the provisions of Section 25-G of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

29. So far as the payment of back wages to the petitioner is concerned, I will like to say that while testifying in the Court as PW1, the petitioner has given his age as 35 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

30. This issue is decided in favour of the petitioner and against the respondents.

ISSUE No. 2 :

31. Not pressed.

ISSUE No. 3 :

32. All the ingredients of Section 115 of the Indian Evidence Act have neither been pleaded nor proved by the respondents. Their ld. counsel is unable to show me as to how the petitioner is estopped from filing the claim petition by his act and conduct.

33. This issue is also decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE No. 4) :

34. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner w.e.f. 14.11.2005 is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 14.11.2005 except back wages. Parties to bear their own costs.

35. The reference is answered in the aforesaid terms.

36. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

37. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of August, 2012.

By order,
Rajan Gupta,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 60/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Smt. Reeta Devi w/o Shri Partap Singh, r/o Village Jangehail, P.O. Ropri, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Reeta Devi w/o Shri Partap Singh, r/o Village Jangehail, P.O. Ropri, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1999. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched

by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services, the seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment, the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have

been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 16.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Smt. Reeta Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not

only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE NO. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms. 25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 147/2011

Date of Institution : 15.12.2011

Date of Decision : 08.08.2012

Shri Sanjay Kumar s/o Shri Sant Ram, r/o Village Sanour, P.O. Sari, Tehsil Sarkaghat,
 Distt. Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
 District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Sanjay Kumar s/o Shri Sant Ram, r/o Village Sanour, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1998. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the

respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have

been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPR

2. Whether the reference is not maintainable in the present form? OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Sanjay Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by

the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE NO. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

(Rajan Gupta)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 135/2011

Date of Institution : 28.11.2011

Date of Decision : 08.08.2012

Smt. Savitri Devi w/o Shri Sher Singh, r/o Village & P.O. Tanehad, Tehsil Sarkaghat, Distt. Mandi, H.P. . . . *Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P. . . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Savitri Devi w/o Shri Sher Singh, Village & P.O. Tanehad, Tehsil Sarkaghat, Distt. Mandi by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1998. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services the seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along-with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors.

The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Smt. Savitri Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity

of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1998 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 51/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Shri Shambu Ram s/o Shri Tawaru Ram, r/o Village Banal, P.O. Baroti, Tehsil Sarkaghat,
Distt. Mandi, H.P. . . . Petitioner.

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P.

. . Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Shambu Ram s/o Shri Tawaru Ram, Village Banal, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as beldar by the respondent in the year 1998. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1998 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 16.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Shambu Ram stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him.

In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a beldar in the year 1998 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his cross-examination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE NO. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 59/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Shri Sharwan Dass s/o Shri Bhadar, r/o Village Morla, P.O. Brang, Tehsil Sarkaghat,
District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B & R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Sharwan Dass s/o Shri Bhadar, r/o Village Morla, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent has not been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 16.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Sharwan Dass stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified

Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is

also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 62/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Smt. Sheela Devi w/o Shri Roop Lal, r/o Village Garoru, P.O. Sajau Piplu, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Sheela Devi w/o Shri Roop Lal, r/o Village Garoru, P.O. Sajau Piplu, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1999. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services, the seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along-with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment, the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- "1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 16.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Smt. Sheela Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-

employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 145/2011

Date of Institution : 15.12.2011

Date of Decision : 08.08.2012

Shri Som Raj s/o Shri Sukh Ram, r/o Village Raru, P.O. Ropari, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B & R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Som Raj s/o Shri Sukh Ram, r/o Village Raru, P.O. Ropari, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily wage basis by the respondent in the year 1999. He worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, his services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date of his termination. Before terminating his services the seniority list of daily wagers working under the respondent hasnot been provided to him. 35 persons junior to him namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri

Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along with him (petitioner). The persons junior to him have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to him (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along with him (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of reengaging Smt. Mamta Devi, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their reemployment the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of reemployment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is still unemployed. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has

not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 24.4.2012, the following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified? OPP
2. Whether the reference is not maintainable in the present form? OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1 :

8. The petitioner Shri Som Raj stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to him as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen,

the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5 :

19. Not pressed.

ISSUE No. 3 :

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE No. 6) :

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 48/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Shri Sunil Kumar s/o Shri Bidhi Singh, r/o Village & Post Office Darwad, Tehsil Sarkaghat,
Distt. Mandi, H.P. .. Petitioner.

Versus

The Executive Engineer, HPPWD (B & R) Division, Dharampur, District Mandi, H.P.
.. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Sunil Kumar s/o Sh. Bidhi Singh, Village & Post Office Darwad, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f.09.02.2004, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar on daily wages by the respondent on the muster roll in the year, 1999. He worked continuously as such upto 8.2.2004. During the above said period, he had completed 240 days of work in each calendar year and the last 12 calendar months preceding the date of his termination. On 09.02.2004, his services were terminated by the respondent along with 1697 daily waged workmen. At the time of dispensing with his services, he (petitioner) was paid the retrenchment compensation. While disengaging his services, the principle of ‘last come first go’ has not been followed by the respondent. The persons junior to him namely S/Sh. Subhash Chand, Shashi Kant, Bidhi Chand, Dharampal and Inder Singh etc. have been retained in service by the respondent. After the termination of his (petitioner’s) services and the other workmen numbering 1697, in the months of June and July, 2004, some of the workmen have been re-engaged by the respondent. He was not given an opportunity of re-employment. In the month of December, 2004, he approached the respondent as well as the Assistant Engineer, Sub Division, Dharampur to provide him the work on the basis of his seniority. The respondent and the Assistant Engineer conveyed to him (petitioner) verbally that they are not in a position to provide him the job being surplus. The respondent and the Assistant Engineer further told him (petitioner) that the retrenchment process of the other workmen who are surplus, is still continuing because of which his services cannot be re-engaged. S/Sh. Balak Ram, Rakesh Kumar, Desh Raj, Abdul Razzak and Mansa Ram etc., who were retrenched on 09.02.2004 alongwith him (petitioner) have been reemployed by the respondent in the months of June and July, 2004 despite the fact that they

are/were junior to him. Not only this, on 08.7.2005 again the respondent retrenched 1087 daily waged workmen. Those workers raised the dispute under the Industrial Disputes Act, 1947 ('the Act' for short) in the years 2007 and 2008. Approximately 500 workmen have been reinstated by the respondent and paid 50 % back wages with all consequential service benefits including the seniority as per the order passed by this Court. The retrenchment order dated 08.7.2005 has been quashed by this Court/Tribunal. The persons who have been reinstated in service and paid 50% back wages are S/Sh. Vijay Kumar, Megh Singh and Sanjay Kumar etc. All of them are/were junior to him (petitioner). The act and conduct of the respondent is highly unjustified, arbitrary and unconstitutional. It is also in contravention of the provisions contained under Sections 25-G and 25-H of the Act. He (petitioner) is unemployed from the date of his illegal termination.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this petition:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 09.02.2004 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice.”

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and he worked continuously up-to 08.2.2004. It stands admitted that the services of the petitioner were terminated w.e.f. 09.2.2004. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. He was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been re-engaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 16.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 09.2.2004 by the respondent is illegal and unjustified as alleged? OPP
 2. Whether the reference is not maintainable in the present form? OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No
 Issue No.2 : Yes
 Issue No.3 : Not pressed.
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2 :

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Sunil Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service when his services were dispensed with. He denied that no person junior to him has been retained in service by the respondent/department. He admitted that his services were engaged by the respondent as a daily waged beldar in the year 1999 and he worked as such up-to the month of July, 2005.

10. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of his services. He also admitted that the services of Smt. Mamta Devi daily waged beldar were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

11. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

12. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

13. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

14. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

15. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and he worked as such without any break. The petitioner (PW1) in his cross-examination admitted that he worked as a daily waged beldar up-to the month of July, 2005.

16. Ex. RW1/D is the copy of the termination notice dated 2nd July, 2005 served by the respondent upon the petitioner under Section 25-N of the Act. Its perusal unfolds that the services of the petitioner were disengaged w.e.f. 08.7.2005 only.

17. The evidence available on the record goes to show that the petitioner served the respondent/department up-to the month of July, 2005. His services were dispensed with by the respondent w.e.f. 08.7.2005 per notice dated 02/7/2005, the copy of which is Ex. RW1/D. Since the petitioner served the respondent/department up-to 07.7.2005, the question of the retrenchment of his services w.e.f. 09.2.2004 (as per the reference) does not arise.

18. It is the basic law that this Court cannot go beyond the terms of the reference. As already mentioned the services of the petitioner were not terminated by the respondent w.e.f. 09.2.2004 as alleged. That being so the reference/claim petition is not maintainable. The petitioner is not entitled to any relief.

19. These issues are decided against the petitioner and in favour of his opponent.

ISSUES No. 3, 4 and 5 :

20. Not pressed.

RELIEF (ISSUE No. 6) :

21. As a sequel to my findings on the various issues, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 155/2012

Date of Institution : 02.3.2012

Date of Decision : 24.8.2012

Shri Suresh Kumar s/o Shri Tek Chand, r/o VPO Aman, Tehsil Bhoranj, Distt. Hamirpur, H.P.

. . . Petitioner.

Versus

1. The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P.
 2. The Director, Regional Horticulture & Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P.
- ... Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S. S. Sippy, AR

For the Respondents : Sh. Pawan Kumar Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Suresh Kumar s/o Sh. Tek Chand, VPO Aman, Tehsil Bhoranj, Distt. Hamirpur in the first instance w.e.f. 21.3.2002 to 03.10.2004 and finally w.e.f. 01.01.2005 by the 1) The Registrar, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni, Distt. Solan, H.P. 2) The Director, Regional Horticulture &

Forestry Research Station, Bhota (Neri), Distt. Hamirpur, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief, back wages and other service benefits the above workman is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

“1. That I was appointed through interview as Labourer on Daily Wages since 03-04-2000 and that I had been continuously been working with the respondent till 20th March 2002.

2. That a certificate awarded to the petitioner by the respondent in regard to his working (Photo copy attached as Annexure A).

3. That the respondent had not counted the weekly off and national and other festival holiday for which the wages have been paid to me by the respondent as per law lay down by the Hon'ble Supreme Court of India in the case of workmen of American Express International Banking Corporation V/s American International Banking Corporation reported in 1985 (67FJR) Page-189.

4. That in the case the national festival holidays and weekly off are added in the actual working day I had worked for more than 240 days of service in each completed year service.

5. That I was nor served with a notice of one month nor I was paid the wages for the same and I was also not paid the compensation as required under section 25-F (b) of the Industrial Disputes Act, 1947, those my termination is void and abinitio.

6. That Hon'ble Tribunal has passed the order dt. 05.04.2004 (Photocopy attached as Annexure-B). Once I had been give continuity of service I am fully entitled to the seniority except back wages.

7. That I cannot be terminated on 01.01.2005 which retaining juniors to me in service which are in Hundred, the names of those shall be disclosed at the time of evidence to avoid tempering of record by the respondents.

8. The lame excuse made by the respondent is that the workmen were temporary causal and seasonal but from the attendance sheet attached would show that I had worked throughout the whole years thus the contention of the respondents are ill-conceived.

9. The management is making pick and choose methods in regard to engagement and disengagement which is unfair labour practice.

10. That I had never been called for re-employment/reengagement as per provided under section 25-H of the Industrial Dispute Act, 1947. But the management is making fresh recruitment/fresh hands which had been admitted by management itself, which is a clear cut contravention of section 25-H of the Industrial Disputes Act, 1947.

11. That in fact there is no project nor there is a project work and no project work had ever been completed but the management by its most nefarious designs had terminated the services of the workmen again and again without complying the provisions of section 25-G, section 25-H and section 25-F of the Industrial Disputes Act, 1947.

12. On the date of my second termination of 24.09.2005. I had completed 267 days of working and as held by the Hon'ble Supreme Court of India that the appointments made for a specified period again and again when the work of the university is going on smoothly rather it had been expended day by day is an unfair labour practice as held by the Hon'ble Apex Court of India in the case of Haryana State V/s Mamni. Reported in 2006 AIR SEW 2979 Haryana State Electronics Development Corporation Para-9.

“The respondent was appointed from time to time. Her service used to be terminated on the expiry of 89 days on regular basis. However, it is notice that she used to be appointed after a gap of one or two days upon completion of each term. Such an action on the part of the Appellant cannot be said to be bonafide. The High Court rejected the contention raised on behalf of the appellant herein stating:

It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been dispute, reveals that the respondent-workman was repeatedly engaged on 89 days basis. It is, therefore, clear that the intention of the management was not to defeat the right available to him under Section 25-F of the Act. The aforesaid practice at the hands of the petitioner-management to employ the workman repeatedly after a national break, clearly falls within the ambit and scope of unfair labour practice.

Thus, it is the settled law of service jurisprudence that whenever work is continuously available, it is not open to the management to split out the work and change the nature of appointment just by giving several appointment letters and term edit as on contract basis. Resultantly all the appointment letters shall be treated as one and it shall be presumed that a workman has continuously worked for more than 240 days with the management”.

13. The management had agreed to give continuity of service and thus I am deemed to be in continuity of service but without back wages. The management had not considered this point at the time of my last termination and thus I am entitled to be service no notice or pay of one month in lieu thereof and compensation payable u/s 25-F (b) of the Industrial Disputes Act, 1947 has neither been paid till date and thus I am deemed to be in service.

14. That junior to me on 01.01.2005 were retained in service in violation to section 25-G of the Industrial Disputes Act, 1947.

15. That my first termination w.e.f. 21.3.2002, 2nd termination w.e.f. 03.10.2004 is illegal, void is against the law of land as such my last and third termination w.e.f. 24.09.2005 is illegal and is liable to set-aside and I am deemed to be in continued service and is entitled to full back wages and with attended benefits same be awarded in the interest of justice”.

3. On notice, the respondents appeared. They filed separate replies controverting the averments made in the petition/statement of claim. The respondent No.1 in his reply has taken the preliminary objections to the effect that the claim petition is not maintainable since the petitioner has not completed 240 days of work in each and every calendar year of his employment. He is estopped from filing the petition by his act, conduct and admissions etc. Earlier, the petitioner had approached the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal by instituting O.A. No.1456/2002 which was decided against him. He (petitioner) is, thus, precluded to agitate the same matter time and again as it amounts to abuse of the process of law.

On merits, the facts that the petitioner was appointed as a labourer on daily wages on 03.4.2000 and he worked continuously up-to 20th March, 2002 have not been disputed. However, it has been pleaded that the petitioner worked on seasonal basis from time to time subject to the

availability of the work and funds at the station. It has been denied that the weekly offs and national holidays etc. were not counted as alleged. The services of the petitioner were engaged as and when there was rush of work in the university research farms at Bhota subject to the availability of the budget. Since the petitioner did not complete 240 days of work in any year of his employment, the question of issuing one month's notice to him anterior to the termination of his services does not arise. The services of the petitioner were not retrenched by the university as alleged. Actually, the petitioner was not inclined to work as a contractual labourer and left the job of his own. Pursuant to the judgment dated 05.4.2004 passed by the Hon'ble Administrative Tribunal, necessary letter of contractual appointment for specific mandays @ Rs.1950/- per month was issued in the name of the petitioner. He (petitioner) worked as contractual labourer for specific days in the years 2004 and 2005 as per the requirement of the university at the relevant point of time. No person junior to the petitioner has been retained in service. The services of the petitioner were never disengaged as alleged. He has not applied for re-engagement in spite of three opportunities offered to him. The petitioner had not completed 267 days of continuous service as claimed. No provision of the Act has been infringed. The claim put forth by the petitioner is wrong and misleading.

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed with costs.

4. On similar lines is the reply submitted by the respondent No. 2 viz. the Director.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that the respondents cannot wriggle out of the consent given by them before the Hon'ble Administrative Tribunal. The management was putting breaks in service so as to debar him (petitioner) from claiming the benefit of 240 days of continuous service. The respondents are/were indulging in unfair labour practice by hiring new workmen at the cost of the old ones.

6. Per order dated 15.5.2012, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondents is illegal and unjustified as alleged? . . .OPP
2. Whether the petition is not maintainable in the present form? . . .OPR
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .OPR
4. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. The petitioner Shri Suresh Kumar stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that his services were engaged by the respondents for seasonal work only and the original application preferred by him before the Hon'ble Administrative Tribunal was rejected. He also denied that on 24.4.2004, the Registrar of the university (respondent No.1) had written a letter to him calling upon him to join the duties which he failed to do. He denied that he did not complete 240 days of work in any year of his employment. Self stated, the respondents did not allow him to work for a continuous period of 240 days. He denied that he left the service of his own and his services were not disengaged by the respondent. Further, he denied that the respondents gave three opportunities to him to join the duties which he failed to do. He does not know that on 30.4.2004, he had written a letter to the respondents informing them that he is joining his duties. He denied that after writing the said letter, he did not join his work because of which he is not entitled to the re-employment etc.

10. Conversely, Sh. R.K. Sood, Senior Assistant of the respondent university stepped into the witness box as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the replies submitted by the respondents.

In the cross-examination, he admitted that the persons whose names appear in Ex. PW1/E are junior to the petitioner and are serving the university. No notice was served upon the petitioner calling upon him to resume the work after he left his duties. Even no inquiry was conducted against him.

11. Ex. PW1/B is the copy of a letter dated 11.10.2000 received from the Registrar of the university by the Regional Research Station, Bhota. As per this letter, the Registrar had directed various officers of the university that they will not allow the daily paid labourers to complete 90 days work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. The Registrar had also directed various officers of the university to ensure that break is given to the daily paid labourers before completing 90 days of work in one spell turn-by-turn.

12. Ex. PW1/C is the copy of the letter dated 19th January, 2001 written by the Associate Director, Bhota Station of the university. Vide this letter also, the Assistant Scientists etc. were directed to give breaks to the daily paid labourers as indicated above.

13. Ex. PW1/D is the list of the workers who are junior to the petitioner.

14. Ex. PW1/E is the copy of the tentative seniority list of daily waged workers etc. of the university as it stood on 31.12.2011.

15. Ex. PW1/F is the copy of the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal in O.A. No.1456/2002 titled as Suresh Kumar vs. Dr. Y.S. Parmar University of Horticulture & Forestry Nauni, District Solan, H.P. & another.

16. Ex. RW1/B is the authority letter issued by the Registrar of the university (respondent No.1) in favour of Shri R.K. Sood (RW1). As per this letter Sh. R.K. Sood (RW1) was authorized to appear in this Court and defend the case on behalf of the university.

17. Ex. RW1/C is the copy of the order dated 05.4.2004 pronounced by the Hon'ble Administrative Tribunal. It corresponds to Ex. PW1/F.

18. Ex. RW1/D is the copy of the memo/appointment letter dated 24.4.2004 written by the Registrar of the university to the petitioner in obedience to the order dated 05.4.2004 passed by the Hon'ble Administrative Tribunal.

19. Ex. RW1/E is the copy of an application dated 30.4.2004 written by the petitioner to the Registrar (respondent No.1). As per this letter, the petitioner joined the service and requested the Registrar to mark his presence.

20. Ex. RW1/F is the mandays chart relating to the petitioner.

21. Ex. R1 is the copy of the judgment dated 31.7.2006 rendered by the Hon'ble Himachal Pradesh Administrative Tribunal, Shimla in MA No. 17/2006.

22. Ex. R2 is the copy of an order dated 29.6.2012 passed by a Division Bench of the Hon'ble High Court of Himachal Pradesh in CWP No.4991/2012-J, titled as Sh. Raj Kumar and others vs. Dr. Y.S. Parmar University of Horticulture and Forestry, Nauni, District Solan and others. The Hon'ble High Court directed the respondents not to disengage the services of the petitioners only for the purpose of denying the benefit of continuous working of 240 days in a year.

23. It is the admitted case of the respondents that the services of the petitioner were engaged as a daily wager on 03.4.2000 and he worked as such at the first instance up-to 20th March, 2002. So far as the disengagement of the petitioner by the respondents w.e.f. 21.3.2002 to 03.10.2004 is concerned, I will like to say that the said controversy has been set at rest by the Hon'ble Administrative Tribunal per order dated 05.4.2004 passed in O.A. No.1456/2002. Exts. PW1/F and RW1/C are the copies of the orders passed by the Hon'ble Tribunal. The Hon'ble Administrative Tribunal had directed that the applicant/petitioner, who is willing to work on contractual basis with the respondent, will be re-engaged. The period when the applicant/petitioner remained out of the job will be counted towards his seniority but he will not be entitled for any back wages. It was also ordered by the Hon'ble Administrative Tribunal that before re-engaging the applicant/petitioner, the respondent university shall communicate the terms and conditions of the employment particularly with regard to the termination clause. The university shall complete the process of selection of the applicant within next 15 days from the date of the order i.e. April 5, 2004.

24. The assertion of the respondents that the services of the petitioner were engaged only for seasonal forestry work from time to time subject to the availability of work and funds does not appear to be true as the same is not supported by any documentary evidence. Otherwise too, if the respondents needed the workmen only for seasonal forestry works, there was no reason or occasion for them to engage new/fresh hands every time. The persons engaged for a particular seasonal forestry work could have been easily re-engaged for the next forestry work. The act and conduct of the respondents seems to be malafide.

25. It is common knowledge that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume his duties after he allegedly left the job. Not only this, there is nothing on the file to suggest that some disciplinary action was initiated against the petitioner by the respondents for his alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

26. From the letters Exts. PW1/B and C, it becomes clear that the university authorities had directed various Field Assistants and Farm Incharges etc. not to allow the daily paid workers to complete 90 days of work in one spell and 240 days in the preceding 12 months so that there may not be any permanent liability on the university due to the regularization of the daily paid labourers. It was directed that the breaks be given to the daily paid labourers turn-by-turn so that the work of the station does not suffer. These instructions issued by the Registrar etc. of the respondent

university are patently illegal and amount to unfair labour practice as per clause 10 of the Vth Schedule appended to the Industrial Disputes Act, 1947 ('the Act' for short).

27. The version of the respondents that the petitioner did not join the duties after the issuance of the appointment letter dated 24.4.2004 (Ex. RW1/D) and in accordance with his (petitioner's) application dated 30.4.2004 (Ex. RW1/E) does not appear to be true since from the monthwise attendance statement of contractual labourers w.e.f. January, 2000 to December, 2005 of the Institute of Biotechnology and Environmental Science, Dr. Y.S. Parmar University of Horticulture & Forestry, Neri, P.O. Khagga, District Hamirpur, H.P. it becomes resplendent that the petitioner had worked after the month of April, 2004 from time to time.

28. Shri R.K. Sood (RW1) in his cross-examination admitted that the workmen whose names figure in the seniority list Ex. PW1/E are junior to the petitioner and are serving the university. This shows that the respondents have failed to adhere to the principle of 'last come first go'. Their action contravenes the provisions of Section 25-G of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

29. So far as the payment of back wages to the petitioner is concerned, I will like to say that while testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

30. This issue is decided in favour of the petitioner and against the respondents.

ISSUE NO. 2

31. Not pressed.

ISSUE NO. 3

32. All the ingredients of Section 115 of the Indian Evidence Act have neither been pleaded nor proved by the respondents. Their ld. counsel is unable to show me as to how the petitioner is estopped from filing the claim petition by his act and conduct.

33. This issue is also decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE NO. 4)

34. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner w.e.f. 01.1.2005 is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.1.2005 except back wages. Parties to bear their own costs.

35. The reference is answered in the aforesaid terms.

36. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

37. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 55/2012

Date of Institution : 06.1.2012

Date of Decision : 08.08.2012

Smt. Tilku Devi w/o Shri Bela Ram, r/o Village and P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Tilku Devi w/o Shri Bela Ram, r/o Village and P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.07.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged on daily wage basis by the respondent in the year 1999. She worked continuously up-to 07.7.2005 without any break. On 8th July, 2005, her services were retrenched by the respondent by paying the compensation and three months notice pay after taking recourse to the provisions of Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). She had completed 240 days of work in each and every year of her employment as well as in a block of 12 calendar months preceding the date of her termination. Before terminating her services, the

seniority list of daily wagers working under the respondent was not provided to her. 35 persons junior to her namely S/Sh. Subhash Chand and Shashi Kant etc. are serving the respondent/department. Shri Shashi Kant was appointed in the year 2000. His services have not been disengaged by the respondent along-with her (petitioner). The persons junior to her have been retained in service by the respondent. The latter has failed to follow the principle of 'last come first go'. One Smt. Mamta Devi w/o late Sh. Hans Raj was appointed by the respondent in the year 2000. She is junior to her (petitioner). The services of Smt. Mamta Devi were also retrenched by the respondent along-with her (petitioner) w.e.f. 08.7.2005. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. She is still working with the respondent/department. At the time of re-engaging Smt. Mamta Devi an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been reengaged by the respondent. At the time of their re-employment, the principle of 'last come first go' has not been adhered to by the respondent. The juniors have been re-engaged. No opportunity of re-employment was afforded to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 have already been set aside by this Court. The Awards passed by this Court have been confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-appointed more than 600 retrenched workmen. They have been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is still unemployed. From the date of her termination, she is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-G and 25-H of the Act.

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs. 5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged on the muster roll as daily wager in the year 1999 and she worked continuously up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005. Daily wagers have been retrenched as per the decision of the Specified Authority-cum-Chief Engineer (Central Zone), Mandi. Three months wages in lieu of the notice period and retrenchment compensation were paid to the petitioner. She was given an opportunity of being heard before the retrenchment. It has been admitted that some junior daily waged workers are working in Dharampur Division. The juniors are

working due to the non-availability of the seniors who were transferred from other Divisions/Sub Divisions. Retrenchment notices have also been given to the junior workmen being surplus. The fact that the services of Smt. Mamta Devi were disengaged along-with the applicant/petitioner has not been disputed. Smt. Mamta Devi has been reengaged on compassionate grounds as her husband Sh. Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-engaged after obtaining the legal opinion from the law department and sanction from the Chief Engineer, Central Zone, Mandi. No provision of the Act has been infringed. The compensation was accepted by the petitioner without any protest. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.
5. Per order dated 16.4.2012, the following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
.. OPP
 2. Whether the reference is not maintainable in the present form? .. OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? .. OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
.. OPR
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? .. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Tilku Devi stepped into the dock as PW1. In her affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service when her services were dispensed with. She denied that no person junior to her has been retained in service by the respondent/department.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In his cross-examination, he admitted that the petitioner had completed 240 days of work during the period of 12 calendar months preceding the date of termination of her services. He also admitted that the services of Smt. Mamta Devi, daily waged beldar, were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she has been re-appointed on compassionate grounds as her husband Sh. Hans Raj died in harness. He denied that Smt. Mamta Devi was junior to the petitioner. Before reengaging Smt. Mamta Devi, no opportunity of re-employment was given to the petitioner. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that at the time of termination of the services of the petitioner, the work and funds were available.

10. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Sh. Shashi Kant s/o Shri Bihari Lal.

11. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order he accorded the permission to retrench a number of workmen.

12. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

13. Ex. RW1/D is the copy of the termination notice under Section 25-N of the Act served by the respondent upon the petitioner.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the year 1999 and she worked as such up-to 07.7.2005 without any break. The respondent (RW1) in his crossexamination admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of her services.

15. The version of the respondent is that the services of the petitioner were dispensed with being surplus after issuing the notice Ex. RW1/D to her, as per the order passed by the Specified Authority, the copy of which is Ex. RW1/A. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh. Therefore, the same does not help the respondent in any manner.

16. From the evidence available on the record coupled with the reply submitted by the respondent, it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, at the time of engaging/re-engaging the new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. Therefore, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act.

The retrenchment of the petitioner is illegal and unjustified. Needless to say that for deriving benefit under the said Sections, a person need not complete 240 days of work in a block of 12 calendar months preceding the date of her termination.

17. Admittedly, the services of more than one thousand workmen were terminated by the respondent along-with the petitioner. A number of references relating to similarly situated workmen have already been decided by this Court. The Awards passed by this Court have been

affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has directed the respondent to pay a lump sum amount of Rs.50,000/- in lieu of the back wages and compensation etc. to each and every workman. The orders passed by the Hon'ble High Court have already attained the finality. To avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

19. Not pressed.

ISSUE NO. 3

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs. 50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 08th day of August, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 17/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Atti Devi w/o Shri Sohan Lal, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Atti Devi w/o Shri Sohan Lal, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wagger on the muster rolls by the respondent w.e.f. December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by

the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs. 50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re- engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.4.2012, following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? . . . OPP
 2. Whether the reference is not maintainable in the present form? . . . OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . . OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . . OPR
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? . . . OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Atti Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent.

In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt.

Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner.

Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble

High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 116/2011

Date of Institution : 27.8.2011

Date of Decision : 13.09.2012

Shri Bablu Ram s/o Shri Mast Ram, r/o Village Hiyun Jandwl, P.O. Hiyun, Tehsil Sarkaghat, Distt. Mandi, H.P.

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Bablu Ram s/o Sh. Mast Ram, Village Hiyun Jandwl, P.O. Hiyun, Tehsil Sarkaghat, Distt. Mandi by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi w.e.f. 08.7.2005 as mason, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex. Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 12th August, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come

first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors.

The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order dated 08.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court again directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs. 5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. 12.8.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs. 50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 11.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
.. OPR
2. Whether the reference is not maintainable in the present form?
.. OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
.. OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
.. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?
.. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Bablu Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt.

Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 12.8.1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs. 50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs. 50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 43/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Bachitar Singh s/o Shri Hirda Ram, r/o Village & Post Office Brang, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Bachitar Singh s/o Shri Hirda Ram, r/o Village & Post Office Brang, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 1st November, 1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as 629 in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each.

He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.11.1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?
.. OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
.. OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
.. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?
.. OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

 Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Bachitar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent.

In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the

petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.11.1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 10/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Beena Devi w/o Shri Lekh Ram, r/o Village Fanel, P.O. Kujabhal, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Beena Devi w/o Shri Lekh Ram, r/o Village Fanel, P.O. Kujabhal, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wagger on the muster rolls by the respondent w.e.f. March, 1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They

have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.

3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs. 5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim.

Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. March, 1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re- engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
.. OPR
2. Whether the reference is not maintainable in the present form?
.. OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
.. OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
.. OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?
.. OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Beena Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service along with her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi)

expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. March, 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 24/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Brahmi Devi w/o Shri Bhag Singh, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Brahmi Devi w/o Shri Bhag Singh, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600

retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs. 5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Brahmi Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wagger no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs. 50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 45/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Dabar Singh s/o Shri Brij Lal, r/o Village Langehar, P.O. Giyun, Tehsil Sarkaghat,
Distt. Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Dabar Singh s/o Sh. Brij Lal, Village Langehar, P.O. Giyun, Tehsil Sarkaghat, Distt. Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified?”

If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 19th January, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim.

Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. 19.1.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
.. OPP
2. Whether the reference is not maintainable in the present form?
.. OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
.. OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?
.. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
- Issue No. 1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Dabar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 19.1.1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of

delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 2/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Dharam Chand s/o Shri Inder Singh, r/o Village Jhareda, P.O. Pehad, Tehsil Sarkaghat,
Distt. Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Dharam Chand s/o Sh. Inder Singh, Village Jhareda, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 1st January, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.

3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. 01.1.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re- engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Dharam Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.1.1999 and he worked as such continuously up-to

07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 15/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Fulla Devi w/o Shri Parkash Chand, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Fulla Devi w/o Shri Parkash Chand, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 1st January, 1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the

first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.1.1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Fulla Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.1.1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed.

The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 34/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Fulmu Devi w/o Shri Chaudhary Ram, r/o Village & Post Office Baroti, Tehsil Sarkaghat, District Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Fulmu Devi w/o Shri Chaudhary Ram, Village & Post Office Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified?

If not, what amount of back wages seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent in the year 1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been reengaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- "1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll in the year 1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Fulmu Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This

shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs. 50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 75/2011

Date of Institution : 25.6.2011

Date of Decision : 01.9.2012

Shri Gobind Ram s/o Shri Gattu Ram, r/o Village Bhallan (Soul), P.O. Bhatwara, Tehsil Sunder Nagar, Distt. Mandi, H.P.

....Petitioner.

Versus

The Divisional Forest Officer, Forest Division Sunder Nagar, Distt. Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of daily wage services of Sh. Gobind Ram s/o Shri Gattu Ram, daily wage workman, by the Divisional Forest Officer, Sunder Nagar, Distt. Mandi w.e.f. March, 2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged on daily basis on the muster roll by the respondent w.e.f. 1st February, 1999. He worked uninterruptedly under the Range Officer, Kangoo up-to November, 2003. During the said period fictional breaks were given to him by the respondent in the months of July and October to December, 1999, August, September, November and December, 2000, January to March, 2001 and September, 2003. In the month of December, 2003, his services were terminated by the

respondent without any notice in a wrongful manner. He (petitioner) approached the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, Shimla and filed the Original Application No.212/2004. The Hon'ble Administrative Tribunal passed an interim order to the effect that his (petitioner's) services be re-engaged if the juniors to him have been retained in service. Thereafter, his services were re-engaged by the respondent in the month of May, 2004. He was provided the muster rolls for the entire month up-to July, 2004. In the month of August, 2004 artificial break in service was given to him by the respondent. In September, 2004, muster roll for only 20 days was issued in his favour. After that, his services were disengaged by the respondent in the month of October, 2004 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('the Act' for short). Fictional break was provided to him up-to the month of January, 2005. In February, 2005, muster roll for the whole month was issued in his favour by the respondent and he worked for 28 days. Break in service was then given to him from March, 2005 to November, 2005. In the month of December, 2005, muster roll for 23 days was provided to him. Then the fictional breaks were given to him in the months of January and February, 2006. His services were reengaged by the respondent in the month of March, 2006 by providing him the work for 4 days only. He had completed 245 days of work in the year 2001, 334 days of work in the year 2002 and 288 days of work in the year 2003. Artificial breaks were given to him (petitioner) by the respondent so that he does not complete 240 days of work in any calendar year of his employment for the purpose of the regularization of his services. Finally, in the month of March, 2006, his services were once again terminated by the respondent. Neither any show cause notice was given to him nor he was informed about the misconduct if any. Neither any inquiry was conducted against him nor one month pay in lieu of the notice period and retrenchment compensation were paid to him. At the time of his retrenchment, the persons junior to him namely Sh. Parkash Chand, Sh. Balak Ram and Smt. Indira Devi were retained in service by the respondent. Not only this, after his disengagement a new person namely Shri Keshav Ram s/o Sh. Sanju was appointed by the respondent. He (petitioner) was not given an opportunity of re-employment. After his termination, he made various representations to the respondent to reinstate him in service, but in vain. The demand notices served upon the respondent under Section 2-A of the Act did not have the desired effect. From the date of his termination upto now he is unemployed. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- “i) The Hon'ble Court may kindly be set aside the illegal breaks period from February, 1999 to March, 2006 and directed to respondent to condone the breaks period of applicant in his continuity of service.
- ii) The Hon'ble Court may kindly be again set aside the unlawful termination order dated March, 2006 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- iii) The Hon'ble Court may kindly be further directed to respondent to consider his regularization case as per the policy of State Government from his initial appointment i.e. February, 1999”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been owned that the services of the petitioner were initially engaged as a daily wager on the muster roll in the month of February, 1999. The petitioner worked intermittently in various forestry seasonal works. No fictional breaks were ever provided to the petitioner. Even

his services were never terminated. Actually, the petitioner used to leave the work as per his sweet will and convenience. He used to abandon the job voluntarily. It stands admitted that pursuant to the interim order dated 25.3.2004 passed by the Hon'ble Administrative Tribunal, the petitioner was re-engaged. After his re-engagement in the month of May, 2004, the petitioner worked intermittently and finally left the service in the month of March, 2006. The mandays chart annexure R-I shows the working pattern of the petitioner. Since the petitioner abandoned the job, no notice was required to be served upon him. He is not entitled to any protection under the Act. Forestry works are seasonal subject to the availability of the funds. As and when the petitioner approached him (respondent) his services were utilized. No person junior to the petitioner has been retained in service. No provision of the Act has been violated. Demand notice dated 19.5.2008 was issued by the petitioner at a belated stage. He is gainfully employed as an agriculturist. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 14.3.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. March, 2006 is violative of the Industrial Disputes Act, 1947 as alleged?
.. OPP
2. Whether the petition is not maintainable in present form?
.. OPR
3. Whether the petition is bad on account of delay and laches as alleged. If so, its effect?
.. OPR
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Gobind Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A filed in accordance with Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were not dispensed with by the respondent and he used to work as per his convenience. He also denied that he could not complete 240 days of work in all the years of his employment due to the reason that he used to leave the job as per his wish time and again. Nowadays he makes both the ends meet by doing the work of agriculture. He denied that he is not entitled to reemployment and compensation etc. as he left the service voluntarily.

9. Conversely, Shri Ajit Thakur, Divisional Forest Officer, Suket Division, Sundernagar (respondent) testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he

admitted that the services of the petitioner were initially engaged in the month of February, 1999. He denied that artificial break used to be provided to the petitioner from time to time. He admitted that Smt. Indira Devi joined the service in the month of December, 2000. He also admitted that as per the record the persons junior to the petitioner are serving the respondent/department.

10. Ex. PW1/B is the copy of the interim order dated March 25, 2004 passed by the Hon'ble Administrative Tribunal in O.A. No.212/2004 titled as Shri Govind Ram vs. State of H.P. through Secretary (Forests) and others.

11. Ex. PW1/C is the list of daily waged workers who have continuously completed 240 days of work in each calendar year up-to 31.12.2006 of the office of the respondent.

12. Exts.PW1/D and E are the copies of the representations/demand notices sent by the petitioner to the respondent.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of interim order dated 25th March, 2004 of the Hon'ble Administrative Tribunal. It corresponds to Ex. PW1/B.

15. Ex. RW1/D is the copy of the final order dated 22nd July, 2004 pronounced by the Hon'ble Administrative Tribunal in O.A. No.212/2004 instituted by the petitioner.

16. Ex. RW1/E is the mandays chart relating to S/Sh. Balak Ram and Parkash Chand daily waged workers serving under the respondent.

17. Ex. RW1/F is the mandays chart pertaining to Smt. Indira Devi and Sh. Keshav Ram working with the respondent.

18. Ex. RW1/G is the copy of the demand notice dated 19.5.2008 sent by the ld. counsel for the petitioner to the respondent and others.

19. No reference has been received from the appropriate Government regarding providing the artificial breaks if any to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be decided by this Court being beyond the terms of the reference.

20. It is the admitted case of the respondent that the services of the petitioner were initially engaged as a daily wager in the month of February, 1999 and he worked intermittently up-to the month of March, 2006. The version of the petitioner is that his services were terminated by the respondent in the month of March, 2006 wrongly and illegally. While denying the said fact the respondent has maintained that the petitioner left the service of his own accord and free volition.

21. It is common knowledge that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Absence from duty is serious misconduct. There is nothing on the record to show that after the petitioner left the service a notice was served upon him (petitioner) by the respondent calling upon him to resume the duties. Not only this, there is nothing on the file to suggest that some disciplinary action was initiated against the petitioner by the respondent for his alleged willful absence from duties. The plea of abandonment put forth by the respondent is not established.

22. It is not the case of the petitioner that the mandays chart Ex. RW1/B produced by the respondent is incorrect. Its perusal discloses that the petitioner did not complete 240 days of continuous work in a block of 12 calendar months preceding the date/month of his termination i.e. March, 2006. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

23. The respondent (RW1) in his cross-examination admitted that Smt. Indira Devi was appointed as a daily wager in the month of December, 2000. He (RW1) also admitted that as per the record, the persons junior to the petitioner are serving the respondent/department. Mandays chart Ex. RW1/F reveals that the services of Smt. Indira Devi were initially engaged by the respondent in the year 2000. This leads to an irresistible conclusion that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. The action of the respondent, thus, contravenes the provisions of Section 25-G of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination.

24. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

25. Not pressed.

ISSUE NO. 3

26. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

27. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

28. The petitioner (PW1) in his cross-examination admitted that he makes both the ends meet by doing the agricultural work. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

29. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

30. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. March, 2006 except back wages. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 9/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Gorkh Nath s/o Shri Subha Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Gorkh Nath s/o Shri Subha Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent in the year 1999. He

uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has reemployed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- "1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone,

Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Gorkh Nath stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex.

PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wagger no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wagger on the muster roll in the year 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the

petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 20/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Heema Devi w/o Shri Himat Ram, r/o Village Shanjair, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Heema Devi w/o Shri Hmiat Ram, r/o Village Shanjair, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. November, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list

of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. November, 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the

petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court.

The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Heema Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith

her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. November, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent

has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 30/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Inderi Devi w/o Shri Kunju Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat,
District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Inderi Devi w/o Shri Kunju Ram, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 2nd December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list

of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs. 50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 02.12.1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the

petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Inderi Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith

her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 02.12.1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent

has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 666/2008

Date of Institution : 29.10.2008

Date of Decision : 19.9.2012

Shri Kamal Nath s/o Shri Neeru Ram, r/o Village Balora, P.O. Kuddi, Tehsil Bhatiyat,
Distt. Chamba, H.P.

....*Petitioner.*

Versus

The Executive Engineer, I.& P.H. Division Dalhousie, Chamba, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Kamal Nath s/o Sh. Neeru, by the Executive Engineer, I&PH Division Dalhousie, Distt. Chamba w.e.f. 26.11.2000, while his juniors have been retained, is proper and justified? If not, what relief of service benefits including seniority & back wages the above worker is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on the muster roll by the respondent on 17.11.1994. He worked continuously as such up-to 26.11.2000. From the date of his initial engagement to May, 1998 he worked in I&PH Sub Division Shiunta. From June, 1998 up-to the date of his termination, he served in I&PH Sub Division, Chowari. He had worked for more than 240 days in each and every calendar year of his engagement.

One month notice of retrenchment dated 21.10.2000 was served upon him by the respondent. In the notice, it was mentioned that his services are no more required w.e.f. 26.11.2000 (afternoon). Aggrieved by the notice dated 21.10.2000, he (petitioner) instituted O.A. (D) No.300/2001 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal, Shimla at Dharamshala. Since the Hon’ble Administrative Tribunal had no jurisdiction to deal with the

matter, he (petitioner) sent a demand notice to the respondent and raised the instant industrial dispute. Copy of the demand notice was also forwarded by him to the Labour-cum-Conciliation Officer. The conciliation proceedings were unsuccessful. His services have been terminated by the respondent in violation of the provisions of the Industrial Disputes Act, 1947 ('the Act' for short). At the time of his retrenchment, the persons junior to him were retained in service by the respondent. The junior workmen who were retained and are still serving the respondent are S/Sh. Angrej Singh, Karnail Singh, Satish Kumar and Uttam Chand etc. At the time of the termination of his services the principle of 'last come first go' has not been adopted by the respondent. The juniors have been retained in service to give the benefit to them at the cost of the seniors. No prior approval of the appropriate Government was obtained by the respondent before his disengagement. In the termination notice, it was mentioned that due to non-availability of the work and funds his services are no more required. After his disengagement, a number of works have been awarded to different contractors by the respondent. This indicates that the work and funds were available with the respondent and his services have been dispensed with malafidely. The same amounts to unfair labour practice. A number of daily wagers have been employed by the respondent after his retrenchment. He was not given an opportunity of re-employment. He continuously approached the respondent/department for re-engagement, but in vain. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal, arbitrary and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- “1. The retrenchment notice dated 21.10.2000 Annexure P-2 be quashed and set-aside being illegal and unjustified and services of the petitioner be re-instated w.e.f. 26.11.2000 afternoon alongwith full back wages and all consequential services benefits including continuity of services.
2. The services of the petitioner be re-instated till the pending decision of the case as the petitioner is unemployed since the date of illegal termination/retrenchment and the petitioner is facing financial hardships to meet his livelihood.
3. To direct the respondent for production of record pertaining to the case of the petitioner.
4. Any other relief as the Hon'ble Court may deem fit”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or constitutional right of the petitioner has been infringed. The services of the petitioner were engaged in the month of November, 1994 due to the availability of the work. He was kept engaged on different works from time to time. His services were terminated after serving one month notice dated 21.10.2000 as per Section 25-F of the Act by following the principle of 'last come first go'. The retrenchment compensation was also paid to the petitioner. As per the law laid down by the Hon'ble Apex Court, the appointment on daily wage basis or casual basis will come to an end as and when the same is discontinued. A temporary employee cannot be made permanent on the expiry of the term of his engagement. The services of a temporary or casual employee cannot be ordered to be continued.

On merits, it has been owned that the services of the petitioner were initially engaged as a daily waged beldar on 17.11.1994 and he worked as such up-to 26.11.2k. The services of the petitioner were terminated after serving one month's notice. He did not complete 240 days of work in each and every calendar year of his employment as is evident from the mandays chart annexure R-I. While disengaging the services of the petitioner the principle of 'last come first go' was adhered to. No person junior to the petitioner has been retained in service or re-engaged. The services of the petitioner and the other similarly situated workmen were discontinued as per law.

Specific works are awarded to the contractors. The petitioner was removed from service alongwith more than 300 other workmen. No new person has been appointed after 26.11.2000 (the date of disengagement of the petitioner) except on compassionate grounds or in obedience to the orders passed by the Court(s). The petition is meritless. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that Sh. Hem Raj, Sh. Brij Lal and Smt. Biasa Devi etc. are junior to the petitioner. They have been retained in service by the respondent.

5. Per order dated 19.6.2009, following issues were struck by one of my ld. Predecessors:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?

.. OPP

2. Whether the petition is not maintainable.

.. OPR

3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. The petitioner Shri Kamal Nath stepped into the witness box as PW1. He reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that before the termination of his services, a notice was served upon him and the retrenchment compensation was paid. He denied that no person junior to him is serving the respondent/department. He does not know that 300 other labourers were removed from service by the respondent.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. He corroborated on oath the contents of the reply submitted by him. In the cross-examination, he stated that he cannot tell as to whether any permission was obtained from the State Government or not before the retrenchment of the petitioner. Even he cannot tell that the persons junior to the petitioner namely Shri Angrej Singh and Smt. Biasa Devi etc. are serving under him. He denied that he has given a phoney statement. He admitted that the persons whose names figure at serial No. 360, 414 and 435 of the seniority list Ex. RW1/G are junior to the petitioner. The name of the petitioner is there at serial No.348 of the seniority list. He admitted that when the juniors were engaged, no notice of re-employment was given to the petitioner. Self stated, the juniors have been re-employed as per the orders of the Court.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the copy of the termination notice dated 21.10.2000 served upon the petitioner by the respondent.

12. Ex. RW1/E is the counterfoil of the cheque which was sent to the petitioner on account of the retrenchment compensation under registered cover per postal receipt Ex. RW1/F.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar on 17.11.1994 and he continuously worked as such up-to 26.11.2000. Admittedly, the services of the petitioner were dispensed with by the respondent by issuing a notice dated 21.10.2000 under Section 25-F of the Act. Ex. RW1/B is the copy of the said notice. Retrenchment compensation was also paid by the respondent to the petitioner which was accepted by the latter.

14. In the seniority list Ex. RW1/G the name of the petitioner figures at serial No.348. From the admissions made by the respondent (RW1), it can be gathered that the persons whose names figure at serial No.360, 414 and 435 of the seniority list are junior to the petitioner and are still serving the respondent/department. From the statement made by RW1, it can also be gathered that the services of Smt. Biasa Devi (serial No.414) and Sh. Hem Raj (serial No.435) were disengaged alongwith the petitioner. Subsequently, Smt. Biasa Devi etc. were re-engaged. At the time of reemployment of Smt. Biasa Devi and others, an opportunity of reengagement was not afforded to the petitioner. The action of the respondent is certainly in contravention of the provisions of Sections 25-G and 25-H of the Act. The termination of the petitioner is illegal and unjustified.

15. So far as the payment of back wages to the petitioner is concerned, I will like to say that in the statement of claim/demand, the petitioner has mentioned his age as 35 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

16. This issue is decided in favour of the petitioner and against the respondent.

ISSUE No. 2

17. Not pressed.

RELIEF (ISSUE NO. 3)

18. As a sequel to my findings on issue No.1, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 26.11.2k except back wages. Parties to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 6/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Kamla Devi w/o Shri Raj Kumar, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat,
District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat,
District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Kamla Devi w/o Shri Raj Kumar, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent in the year 1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a

block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been reengaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- "1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other

Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Kamla Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the

labour became surplus. She admitted that 1087 other workers were removed from service along with her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent along with the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C along with the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-

employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 7/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Kamli Devi w/o Shri Duni Chand, r/o Village and P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Kamli Devi w/o Shri Duni Chand, r/o Village and P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). She had completed 240 days of work in each and every calendar year of her employment as

well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other

Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Kamli Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the

labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. December, 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-

employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 343/2009

Date of Institution : 23.5.2009

Date of Decision : 13.9.2012

Shri Lal Singh s/o Shri Hari Dass, r/o Village Chaloh, P.O. Saigloo, Sub Tehsil Kotli, Distt. Mandi, (HP)

....Petitioner.

Versus

The Executive Engineer, HPSEB, Electrical Division, Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Lokesh Kapoor, Adv.

For the Respondent : Sh. J. S. Chauhan, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Lal Singh s/o Sh. Hari Dass by the Executive Engineer, HPSEB Division, Mandi, Distt. Mandi, H.P. w.e.f. 16.4.2000 without complying the provision of Industrial Disputes Act, 1947 and not giving him opportunity for reemployment at the time of re-employment of his juniors is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar by the respondent. He worked in Saigloo Sub Division from 25.9.1997 to 16.4.2000 as well as completed 240 days of work in each and every calendar year of his engagement. His (petitioner's) services were terminated by the respondent alongwith six other persons by a verbal order in contravention of the mandatory provisions of the Industrial Disputes Act, 1947 ('the Act' for short) and the Standing Orders issued by the Himachal Pradesh State Electricity Board. A few persons challenged the illegal termination notice before the Hon'ble Administrative Tribunal by instituting Original Application No. 453/2000. The dispute was subsequently referred to the Labour Court. The Labour Court, per its decision dated 17.12.2004 declared the termination notice to be null and void. The respondent/Board was directed to re-

engage the services of the aggrieved persons. The persons junior to him (petitioner) namely Smt. Uma Devi, Sh. Kaul Singh, Sh. Ramesh, Sh. Jagdish, Sh. Pawan and Sh. Shiv Ram have been retained in service by the respondent. They are still serving the respondent/Board. The latter has not complied with the principle of 'last come first go'. At the time of the termination of his services, no compensation was paid to him. After his disengagement, the persons junior to him have been re-employed by the respondent/Board. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, he (petitioner) prays that the verbal termination order be set aside. The respondent be directed to re-engage him in service with all consequential benefits including the seniority etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. No legal or vested right of the petitioner has been infringed because of which he is not entitled to file this petition. The petitioner is estopped from filing the petition by his act and conduct. The petition is time barred. It has been instituted at a belated stage. No work and funds are available with him (respondent). The instant petition has not been properly instituted/constituted. The same is bad for non-joinder of the necessary parties and mis-joinder of the parties.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar. However, it has been pleaded that he worked from 25.10.1997 to 24.4.2000 with certain interruptions. The petitioner used to serve as per his sweet will because of which he could not complete 240 days of work in a calendar year of his employment. At the time of the employment of the petitioner, it was conveyed to him that the work for which his services have been engaged is of casual nature as well as after the completion of the work/scheme, his services will stand terminated automatically. The petitioner agreed to these terms and conditions of the engagement. He used to remain absent from work without prior information to the officials of the Board. He used to work at other places where he was earning more. The petitioner and Smt. Uma Devi etc. were engaged as casual beldars for a specific work subject to availability of the budget. The services of the petitioner and his co-workers were liable to automatic termination on the completion of the work/scheme. The services of the coworkers of the petitioner were also disengaged alongwith him. Smt. Uma Devi and others were regular towards their job. They preferred an original application before the Hon'ble Administrative Tribunal immediately after their disengagement. Smt. Uma Devi etc. have been re-employed as per the orders of this Court. The petitioner did not approach the Court within time. The petition instituted by him is hopelessly time barred. The facts and circumstances of others workers are different than the facts of the case of the petitioner. No provision of the Act has been flouted. The petitioner is not entitled to any protection under the Act. He (petitioner) is not entitled to any relief due to his negligence and willful absence from duty. The services of the petitioner were never terminated. No person junior to him has been retained in service or re-engaged. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 12.1.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 16.4.2000 is violative of the provisions of Section 25-G and 25-H of the Industrial Disputes Act as alleged is illegal. If so, to what effect?

.. OPP

2. Whether the present reference is not maintainable as alleged. If so, to what effect?

.. OPR

3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?

.. OPR

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Partly Yes Partly No

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. The petitioner Shri Lal Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his co-workers namely Smt. Uma Devi etc. were also removed from service alongwith him on the completion of the work. He does not know that Smt. Uma Devi etc. had immediately challenged their termination before the Hon'ble Administrative Tribunal. He admitted that Smt. Uma Devi and others have been re-engaged as per the orders of the Court. After the year 2000, he (PW1) raised the present industrial dispute only. He denied that at the time of his employment it was conveyed to him that on the completion of the work/scheme, his services will come to an end automatically. He denied that he earns eight to ten thousand rupees each month and has instituted a phoney petition.

9. Conversely, Shri Ashwani Kumar Kahnotia, Sr. Executive Engineer, HPSEB Ltd. Electrical Division, Mandi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that as per the record the petitioner served as a daily wager (casual beldar) from 25.10.1997 to 16.4.2000. The petitioner used to remain absent from duty voluntarily during the period of his engagement. The services of Smt. Uma Devi and others were dispensed with alongwith the petitioner. Smt. Uma Devi etc. have been re-engaged as per the orders of the Court since they immediately challenged the termination order before the Hon'ble Administrative Tribunal. In the cross-examination, he stated that before terminating the services of the petitioner a notice was served upon him. Copy of that notice has not been produced in the Court. He admitted that Smt. Uma Devi and Sh. Kaul Singh etc. are serving under him. He also admitted that the petitioner used to work with Smt. Uma Devi and others. He denied that the petitioner had completed 240 days of work in each and every year of his engagement. He admitted that there is no written notice/order in the record evidencing that the services of the petitioner were engaged for a specific work/scheme.

10. The assertion of the respondent that the services of the petitioner were engaged for particular work/scheme does not appear to be true as the same is not supported by any documentary evidence. Otherwise too, it is an admitted fact that Smt. Uma Devi and others, who were working with the petitioner, have already been re-engaged by the respondent as per the orders of the Court.

11. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 25.10.1997 and he worked as such intermittently up-to 16.4.2000. The petitioner has maintained that he had completed 240 days of work in each and every calendar year of his employment. This fact has been denied by the respondent. No cogent and convincing evidence including the mandays chart is there on the file evidencing that the petitioner had continuously worked for 240 days in a block of 12 calendar months preceding the date of his termination i.e. 16.4.2000. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

12. From the statement made by the respondent (RW1), it can be gathered that the services of the petitioner were terminated after issuing a notice to him. The copy of the said notice has not been placed/exhibited on the record. At the time of the arguments, the Id. counsel for the respondent fairly conceded at bar that in the connected matters relating to co-workers of the petitioner, it has already been held by this Court that the persons junior to the petitioner are serving the respondent/Board. The termination order has already been upset by this Court and the workers, whose services were disengaged, have been ordered to be reinstated in service. In view of these facts, it is held that the respondent has failed to abide by the principle of 'last come first go'. The action of the respondent is violative of Section 25-G of the Act. The termination of the petitioner is wrong and illegal.

13. This issue is decided accordingly.

ISSUE No.2

14. Not pressed.

ISSUE NO. 3

15. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

16. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

17. While testifying in the Court as PW1, the petitioner has given his age as 56 years. It is well known that a middle aged man like the petitioner will not sit at home during the period, he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

18. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

19. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed.

The respondent is directed to re-engage the petitioner forthwith (if he has not attained the age of superannuation). He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.4.2000 except back wages. Parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 271/2010

Date of Institution : 30.12.2010

Date of Decision : 01.09.2012

Shri Lala Ram s/o Shri Ram Saran, r/o Village Bakhunhi, P.O. Bakhrot, Tehsil Karsog,
District Mandi, H.P.

...Petitioner.

Versus

The Settlement Officer, Kangra Division, Kangra at Dharamshala, District Kangra, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.C. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Lala Ram s/o Shri Ram Saran daily wage chainman by the Settlement Officer, Kangra Division, Kangra at Dharamshala, H.P. w.e.f. July, 2003 vide notice dated 21.07.2003 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was engaged as Chain Man on daily wages for 89 days w.e.f. 21st March, 1997. He worked continuously as such up-to 31st July, 2003. He was working with the respondent in Manali Circle in the office of Naib Tehsildar (Settlement). He had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date/month of his termination. His services were dispensed with by the respondent wrongly, illegally and arbitrarily w.e.f. 31st July, 2003 by serving a notice dated 21st July, 2003. During the period of his employment, his work and conduct was above board. No complaint was received against him from any quarter. At the time of termination of his services, no reason was assigned by the respondent. Even no retrenchment compensation was paid to him as required under Section 25-F of the Industrial Disputes Act, 1947 ('the Act' for short). No seniority at divisional level has been assigned to him (petitioner) by the respondent/department. The persons junior to him have been retained in service by the respondent. The principle of 'last come first go' has not been adhered to. The act and conduct of the respondent is also violative of Section 25-G of the Act. He (petitioner) had preferred O.A. No.2107/2003 before the Hon'ble Himachal Pradesh Administrative Tribunal for the redressal of his grievances. Such Original Application was disposed of by the Hon'ble Tribunal with the remarks that it has no jurisdiction to deal with it. The work for which his services were engaged is of permanent nature. New/fresh hands have been engaged by the respondent. At the time of engaging the new/fresh hands an opportunity of re-employment was not afforded to him by the respondent as per Section 25-H of the Act. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- "I. That the Respondent may kindly be directed to reengage/reinstate the applicant in service from the date of his illegal termination i.e. 31.7.2003 and the notice dated 21.7.2003 (Annexure R-2) may kindly be quashed and set aside.
- II. That the respondents may kindly be directed to assign seniority and regularize the services of the applicant and also pay back wages for forced unemployment being faced by the applicant on the basis of illegal termination w.e.f. 31st July, 2003.
- III. That the entire record of the case viz Muster Roll/casual card etc. be summoned and the respondent be burdened with cost of this application.
- IV. Any other order/direction which the authority deem just and proper in the interest of justice and fair play may kindly be passed/issued in favour of the applicant".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable. The petitioner has no enforceable cause of action. The petition is bad on account of delay and laches on the part of the petitioner. He (respondent) by undertaking the settlement operation was performing the sovereign function of the State. Therefore, he does not fall under the definition of the industry. This Court/Tribunal has no jurisdiction to entertain and try the petition. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court.

On merits, it stands admitted that the petitioner was employed as Chain Man in the office of Settlement Officer, Kangra at Dharamshala, on 21.3.1997. It has been owned that the petitioner was transferred from one place to the other from time to time. The mandays chart of the petitioner is appended as annexure R-I to the reply. The copy of the Office Order with respect to the appointment of the petitioner is attached as annexure R-II to the reply. The State Government by taking recourse to the provisions of the H.P. Land Revenue Act, 1954 carries out sovereign function of surveys/settlement of land holdings by undertaking the Settlement Operations under the overall supervision of the Settlement Officer (respondent) Per Notification dated 9th February, 1995 issued by the State Government, the area falling within the territorial jurisdiction of District Kullu came under the Settlement Operation. Copy of such Notification is annexed as annexure R-III to the

reply. For carrying out the Settlement Operation, the respondent employed Chain Men as per law in a phased manner. On 03.04.2003, as many as 64 daily paid Chain Men were employed. Their composite seniority list is attached as annexure R-V to the reply. With the conclusion of the work of settlement, the need of work force diminished. Due to the non-availability of the work, funds and sanction, it was difficult for him (respondent) and the State to carry on with the services of all the Chain Men. Accordingly, the State of H.P. vide letter dated 26.8.2002 accorded the sanction/approval for the posts of 116 casual Patwaris and 50 daily waged Chain Men. In view of the sanction, he (respondent) by applying the principle of 'last come first go' terminated the services of the Chain Men figuring at serial No. 51 to 64 of the seniority list (annexure RV). A notice dated 21.7.2003 (annexure RVI) was duly given to the petitioner informing him that his services shall stand dispensed with w.e.f. 31.7.2003. The petitioner and the similarly situated persons are not entitled to any protection under the Act or continuity in service. The Settlement Operation is not of permanent nature. It has been owned that the petitioner had instituted the Original Application before the Hon'ble Tribunal. The said Original Application was withdrawn by the petitioner from the Hon'ble High Court of his own accord and free will. The instant industrial dispute has been raised by the petitioner at a belated stage. The petitioner has been retrenched from service being surplus. No provision of the Act has been flouted. The disengagement of the petitioner is legal and valid. He is not entitled to any relief. The petitioner is gainfully employed as an agriculturist after his termination. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and denied the objections put forth by the respondent. It has been maintained that the settlement work is still continuing in the State of Himachal Pradesh. He (petitioner) can be reengaged at a place where the work and funds are available. The persons junior to him namely S/Sh. Durga Dass and Mohinder Singh have already been re-employed by the respondent as per the orders of the Court.

5. Vide order dated 20.12.2011, below given issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. July, 2003 is violative of the provisions of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP
2. Whether the reference is not maintainable as the respondent is allegedly performing sovereign function, if so, to what effect? OPR
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No. 2 : No

Relief. : Claim petition allowed in part vide operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Sh. Lala Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim and rejoinder in entirety. In the cross-examination, he admitted that a seniority list of the Chain Men was prepared by the respondent/department. His name is there at

serial No. 58 of the said list. He admitted that the Chain Men whose names figured at serial No.51 to 64 of the seniority list were removed from service by the respondent after issuing them the notices. He denied that the services of the Chain Men were disengaged due to the non availability of the work. The settlement operation is going on in Joginder Nagar and Sujampur at present. He denied that the settlement operation is not in progress in Kullu District. Further, he refuted that he has instituted a phoney petition to harass his adversary.

9. Conversely, Sh. J.S. Pathania, Settlement Officer, Kangra Division at Dharamshala (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the petitioner was appointed as a daily wager on 21.3.1997 on the muster rolls. He also admitted that the petitioner had completed 240 days of work in each and every year of his employment as well as in a block of 12 calendar months preceding the date/month of his retrenchment. Further, he admitted that the workmen whose names figure at serial No.59 to 64 of the seniority list Ex. RW1/E are junior to the petitioner and are serving under him (respondent). He admitted that at the time of termination of the services of the petitioner, one month notice was not given. Self stated, the services of the petitioner were engaged during the settlement operation which came to an end. He admitted that one month pay in lieu of the notice period and retrenchment compensation were not paid to the petitioner. He also admitted that when the services of the petitioner were disengaged, settlement operation was in progress in Hamirpur, Una and Kullu Districts of Himachal Pradesh. He admitted that when the persons junior to the petitioner were employed, an opportunity of re-employment was not given to him. He denied that the services of the petitioner were dispensed within a wrongful manner.

10. Ex. PW1/B is the copy of the office order dated 20th March, 1997 issued by the respondent. It unfolds that the services of the petitioner were engaged for 89 days as a daily waged Chain Man alongwith the others.

11. Ex. PW1/C is the copy of the notice dated 21st July, 2003 served upon the petitioner by the respondent. As per this notice the services of the petitioner were terminated by the respondent w.e.f. 31.7.2003 (afternoon).

12. Ex. PW1/D is the copy of the judgment dated 29.4.2010 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP (T) No.9552 of 2008 titled as Durga Dass vs. State of Himachal Pradesh and another.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of the notification dated 9th February, 1995 issued by the Department of Revenue, Government of Himachal Pradesh. Vide this notification the record of rights of District Kullu was ordered to be revised.

15. Ex. RW1/D is the copy of the instructions regarding employment of Patwaris and temporary workmen for the purpose of settlement.

16. Ex. RW1/E is the copy of the seniority list of daily waged Chain Men of the office of the respondent as it stood on 31.3.2003.

17. Ex. RW1/F is the copy of an office order dated 28.6.2010 issued by the respondent. It clarifies that in obedience to the orders passed by the Hon'ble High Court of Himachal Pradesh, the services of S/Sh. Mohinder Singh and Durga Dass, daily waged Chain Men, were re-engaged by the respondent.

18. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged Chain Man w.e.f. 21st March, 1997 and he worked as such upto 31.7.2003 (afternoon). It is not the case of the respondent that the petitioner abandoned the job of his own. Rather, his version is that the services of the petitioner were terminated w.e.f. 31.7.2003 (afternoon) after serving the notice dated 21.7.2003, the copy of which is Ex. PW1/C. From the statement made by the respondent (RW1), it becomes clear that the settlement operation is still going on in Districts Hamirpur, Kullu and Una. Therefore, it cannot be said that the respondent had no work to continue with the services of the petitioner as he had become surplus due to the completion of the settlement operation/work.

19. The testimony made by Shri J.S. Pathania (RW1) and the mandays chart Ex. RW1/B go to show that the petitioner had completed 240 days of continuous service in a block of 12 calendar months preceding the date of his retrenchment i.e. 31.7.2003. It is not the version of the respondent that the petitioner/workman was given one month's notice in writing indicating the reasons for retrenchment. Rather, notice dated 21.7.2003, the copy of which is Ex. PW1/C, was given to the petitioner by the respondent indicating that his services shall stand terminated w.e.f. 31.7.2003 (afternoon) i.e. just after 10 days from the date of the issuance of the notice. Admittedly, no retrenchment compensation was paid to the petitioner. Therefore, it can be safely said that the respondent has failed to comply with the mandate of Section 25-F of the Act.

20. It has come in the statement of the respondent (RW1) that the persons junior to the petitioner are serving the department. It is also there in the deposition of RW1 that the settlement operation is continuing in different areas. There is not even an iota of evidence on the record to show that an opportunity of re-employment was given to the petitioner after his retrenchment before engaging new/fresh hands. The principle of 'last come first go' has not been adhered to by the respondent. His action, thus, also contravenes the provisions of Sections 25-G and 25-H of the Act. The termination of the petitioner is illegal and unjustified.

21. This issue is decided accordingly.

ISSUE NO. 2

22. Taking into consideration the observations made by our Hon'ble High Court in Civil Writ Petition (T) No.9554/2008 titled as Mohinder Singh vs. State of H.P. & anr. decided on 26.4.2010 as well as Civil Writ Petition (T) No.9552/2008 titled as Durga Dass vs. State of H.P. and another decided on 29.4.2010, it can be easily said that the provisions of the Act are applicable to the instant case. The petition is maintainable in the present form.

23. So far as the payment of back wages to the petitioner is concerned, I will like to say that while testifying in the Court as PW1, the petitioner has given his age as 46 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

24. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 3)

25. As a sequel to my findings on the aforesaid issues, the claim petition in hand succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 31.7.2003 except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 218/2010

Date of Institution : 04.8.2010

Date of Decision : 13.9.2012

Shri Madan Singh s/o Shri Prakam Singh, r/o Village Tilli, Tehsil & Distt. Mandi, H.P.

...Petitioner.

Versus

The Executive Engineer, HPSEB, Electrical Division, Mandi, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Harbansh Singh s/o Sh. Rattan Singh by the Executive Engineer, HPSEB Division, Mandi, Distt. Mandi, H.P. w.e.f. 19.2.2000 is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Worker is entitled to from the above employer?”

2. After the receipt of the reference a corrigendum was received from the appropriate Government. It reads thus:-

“In the memo of parties the father’s name of Sh. Madan Singh be read ‘Sh. Prakam Singh’ instead of ‘Sh. Parkash Singh’ and in the issue of reference the name of worker be read as ‘Sh. Madan Singh s/o Sh. Prakam Singh’ instead of ‘Sh. Harbansh Singh s/o Sh. Rattan Singh’ ”.

3. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on the muster rolls by the respondent w.e.f. 25.12.1997. He was working to the entire satisfaction of his superiors and never left the work. On 19.02.2000, his services were terminated by the respondent without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('the Act' for short) and the Rules framed there under. His services have been disengaged by the respondent despite the availability of the sufficient work. During the period of his employment, the respondent used to give him the artificial breaks. At the time of the termination of his services the persons junior to him including Smt. Uma Devi etc. were retained in service by the respondent. The juniors were also allowed to complete 240 days of work by the respondent. Not only this, after his retrenchment new/fresh hands have been engaged by the respondent. He was not given an opportunity of reemployment. He has been victimized by the respondent so as to favour the junior workmen. From the date of his disengagement he is idle. The act and conduct of the respondent is illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- “[I] That the oral illegal retrenchment order dated 19.2.2000 may kindly be set-aside & respondent/employer may be directed to reengage/reinstate the applicant continuously with back wages & all consequential benefits.
- [II] That the period of interrupted services may be counted towards continuous service & respondents/employer may be directed to consider the period of his continues service for the purpose of work charge status/regularization in accordance with the judgment of Apex Court in this behalf with all consequential benefits”.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is misconceived because of which it deserves rejection. The petitioner has no locus standi to sue. He did not complete 240 days of work in any calendar year of his employment. The petitioner has no cause of action. The claim petition is not maintainable. The petitioner has not approached this Court with clean hands. He has suppressed the material facts from the Court.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 25.12.1997 and he worked intermittently up-to 17.2.2000. The petitioner used to remain absent from work without any prior intimation. Neither any artificial breaks were given to him nor he (petitioner) was removed from service. After 17.2.2000 the petitioner never visited his (respondent's) office for work and abandoned the job. No person junior to the petitioner is serving under him (respondent). Even no new/fresh hands have been employed. The petitioner has not been victimized. He is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he never remained willfully absent from duty or abandoned the job. Before the termination of his services no notice was served upon him. Even no inquiry was conducted against him.

6. Per order dated 11.1.2012, following issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 19.2.2000 is violative of the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act as alleged. If so, to what relief the petitioner is entitled to?

.. OPR

2. Whether the reference is not maintainable as alleged. If so, to what effect?

.. OPR

3. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No. 2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

9. The petitioner Shri Madan Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he did not complete 240 days of work in any year of his employment. He also denied that his services were engaged for a particular work i.e. the erection of the pillars. Further, he denied that he used to work as per his convenience and left the services of his own on 17.2.2000. After that date he had visited the office of the respondent for re-employment. He denied that no person junior to him has been retained in service by the respondent and he has given a phoney statement.

10. Conversely, Shri Suresh Kumar Sen, Assistant Engineer, Electrical Sub Division No. II, Mandi testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondent. In the cross-examination, he admitted that the seniority list of the daily wagers is maintained at the Divisional level. He also admitted that after the year 1997, new workmen including Smt. Uma Devi were appointed. He admitted that the persons junior to the petitioner are still serving the respondent/department. Further, he admitted that at the time of engaging new/fresh hands in the year 2000, no notice was given to the petitioner for re-employment. He admitted that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Even no domestic inquiry was carried out against the petitioner. He admitted that the petitioner worked in different schemes. He denied that the services of the petitioner were dispensed with in a wrongful manner.

11. Ex. RW1/B is the mandays chart relating to the petitioner.

12. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

13. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar w.e.f. 25.12.1997 and he worked intermittently up-to 17.2.2000. The version of the petitioner is that his services were terminated by the respondent wrongly and illegally on 19.2.2000. While denying the said fact, the respondent has maintained that the petitioner abandoned the job of his own accord and free volition.

14. It is common knowledge that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is there in the statement of Shri Suresh Kumar Sen (RW1) that no notice was served upon the petitioner calling upon him to resume the work after he allegedly abandoned the job. Absence from duty is serious misconduct. It has come in the deposition of RW1 that no disciplinary action was initiated against the petitioner for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

15. The mandays chart Ex. RW1/B unfolds that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 19.2.2000. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. From the statement made by Shri Suresh Kumar Sen (RW1), it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Not only this, RW1 admitted that new labour was employed in the year 2000. At the time of engaging new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. That being so, the act and conduct of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination to derive benefit under Sections 25-G and 25-H of the Act.

17. So far as the payment of back wages to the petitioner is concerned, I will like to say that while testifying in the Court as PW1, the petitioner has given his age as 34 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

18. This issue is decided accordingly.

ISSUE No. 2

19. Not pressed.

RELIEF (ISSUE NO. 3)

20. As a sequel to my findings on issue No.1, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reengage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 19.2.2000 except back wages. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 5/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Marahaju Devi w/o Shri Jagat Ram, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Marahaju Devi w/o Shri Jagat Ram, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent in the year 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year

2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been reengaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re- engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.4.2012, following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
.. OPP
 2. Whether the reference is not maintainable in the present form?
.. OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
.. OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
.. OPR
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?
.. OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No. 2 : Not pressed
 Issue No. 3 : No
 Issue No. 4 : Not pressed.
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Marahaju Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged

beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 14/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Meera Devi w/o Shri Kashmir Singh, r/o Village and P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Meera Devi w/o Shri Kashmir Singh, r/o Village and P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. January, 1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year

2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. January, 1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs. 4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
OPP
2. Whether the reference is not maintainable in the present form?
OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?
OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Meera Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service along with her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi)

expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. January, 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 226/2010
Date of Institution : 06.8.201
Date of Decision : 01.9.2012

Shri Mohan Singh s/o Shri Beli Ram, r/o VPO Gumma, Tehsil Joginder Nagar, Distt. Mandi, H.P.

....Petitioner

Versus

1. The Director, Rural Development, H.P. Shimla-9.
2. The Block Development Officer, Padhar Block, Padhar, Distt. Mandi, H.P.

...Respondents

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondents : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether Non-Regularization of services as Supervisor of Sh. Mohan Singh s/o Sh. Beli Ram, VPO Gumma, Tehsil Joginder Nagar, Distt. Mandi, H.P. by i)The Director, Rural Development, H.P. Shimla-9. ii) The Block Development Officer, Padhar Block, Padhar, Distt. Mandi, H.P. after completion of more than ten years of continuous service as per decision in case titled-Moolraj Upadhyay V/s State of H.P. by the Hon’ble Supreme Court of India/Policy of the State Govt. of Himachal Pradesh, is legal and justified? If not, what amount of back wages/difference of wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged by the BDO (respondent No.2) on daily wage basis as Works Inspector/Supervisor on the muster roll w.e.f. 1st August, 1982. He continuously worked in the same capacity up-to 30.4.1990. On 1st May, 1990, his services were unlawfully terminated by the respondent No.2. Thereafter, he raised an industrial dispute against the employer (respondent No.2) per Reference/Claim Petition No.89/2002. Such reference/claim petition was decided in his (petitioner’s) favour on 25.11.2004 by this Court. The termination order dated 01.5.1990 was set aside. He (petitioner) was ordered to be reinstated in service alongwith all the consequential benefits including the back wages and seniority etc. As per the Award dated 25.11.2004, his services were reinstated by the respondent No.2 and full back wages were paid to him. In the year 2007, his services have been regularized by the respondents in the capacity of a Clerk in the pay scale of Rs.3120-5160. Presently, he (petitioner) is working in the office of Block Development Officer, Chauntra Block, Tehsil Joginder Nagar, District Mandi. He had completed more than 10 years of continuous service with 240 days of continuous work in each calendar year of his employment w.e.f. 01.8.1982 to 31.12.1993. Thus, as per the judgment of the Hon’ble Apex Court in the case titled as Mool Raj Upadhaya vs. State of Himachal Pradesh and others, his services are required to be regularized w.e.f. 01.1.1994 in the capacity of the Works Inspector or Clerk in the pay scale of Rs.950-1800/- with initial start of Rs.1000/- per month plus all consequential benefits and revised pay scale of Rs.3120-5610/- with all other allowances and benefits w.e.f. 01.1.1996. From 01.1.2006, he is again entitled to the revised pay scale of Rs.5900-20200/- plus other allowances and benefits to which the other government employees are entitled. Since his services were not regularized by the respondents on the due date i.e. 01.1.1994, he raised the industrial dispute by issuing a demand notice dated 27.10.2005 under Section 2-A of the Industrial Disputes Act, 1947 (‘the Act’ for short). Copy of the notice was also forwarded to the Conciliation Officer,

Joginder Nagar. During the conciliation proceedings, Joint Director (Rural Development) submitted the reply dated 10.11.2005 to the demand notice. As his demands were not accepted by the respondents, it has led to the present dispute.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “i) The Hon’ble Court may kindly be determine the facts of the case and directed to respondents to regularize the services of applicant as per the judgment of Hon’ble Apex Court case titled Mool Raj Upadhaya w.e.f. 01.1.1994 in the pay scale of Rs.950-1800/- initial start Rs.1000/- per month + all other allowances and consequential service benefits in the capacity of class III category as like Works Inspector or Clerk.
- ii) The Hon’ble Court again directed to respondents to pay the all arrears w.e.f. 01.01.1994 to onwards and fixed him in revised pay scale w.e.f. 01.1.1996 and 01.1.2006.
- iii) The Hon’ble Court further directed to respondent to fix the applicant in his cadre seniority of regular cadre as on 01.1.1994 and the Hon’ble Court further directed to respondents to pay the 12% interest on back arrear and amounting Rs.5000/- as litigation cost in the favour of applicant in the interest of justice and justice be done”.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. Initial instructions with regard to the regularization of daily waged workers were issued by the Government of Himachal Pradesh on 11th July, 1995. In accordance with these instructions daily waged employees who had completed 10 years or more service with minimum 240 days in each calendar year as on 31st March, 1995 were to be regularized against the vacant posts or by creation of the new posts. In the year 2000, the Rural Development Department had referred the matter to the Personnel Department seeking clarification as to whether the regularization of daily paid employees can be done with retrospective effect or not? The Personnel Department vide its advice dated 03.2.2001 clarified that the completion of required year of service makes a daily wager eligible for consideration to be regularized. The regularization in all the cases will be done from prospective effect i.e. from the date the orders of regularization are issued after completion of all the codal formalities. The advice given by the Personnel Department makes the position of the Government policy clear and leaves no ambiguity regarding the regularization of services of an individual. In the absence of any provision, there is no possibility of retrospective regularization of the services of the petitioner. He is a regular Government servant governed by the statutory rules. No industrial dispute exists between the parties. This Court has no jurisdiction to entertain and decide the matter. Rural Development Department does not fall within the definition of an industry as given in Section 2(j) of the Act. The department performs the sovereign functions regarding the implementation of the various development schemes. The petition is bad on account of delay and laches on the part of the petitioner. The instant reference/claim petition has become infructuous in view of the order dated 22.9.2007 vide which the services of the petitioner stand regularized as a Clerk. On merits, it has been owned that the relationship of employer and employee exists between the parties. However, it has been pleaded that the services of the petitioner were engaged as a daily waged beldar w.e.f. 12.8.1982. His mandays chart is annexure R-1. Passing of the Award dated 25.11.2004 by this Court in Reference No.89/2002 has not been disputed. It has been maintained that the said Award has been implemented in letter and spirit. Back wages amounting to Rs.3,35,173/- calculated for the period 01.5.1990 to 30.9.2005 have already been paid to the petitioner. According to the directive of the Court, the services of the

petitioner have been regularized per order dated 22nd September, 2007 alongwith the similarly placed daily waged workers who had completed 240 days of work in eight years of service up-to 31.3.2004. As per the prevailing policy of the Government a daily wagger is to be regularized against the post/vacancy of the relevant category. In the year 2007, on the availability of the post the case of the petitioner for regularization was considered alongwith the similarly situated workmen. After the implementation of the Award passed in Reference No.89/2002, no dispute remains between the parties. The petition is meritless. In these circumstances, the respondents pray that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the claim petition and refuted the objections put forth by the respondents. It has been pleaded that the services of the persons junior to him have been regularized by the respondents prior to his regularization. The name of one of the juniors is Sh. Suresh Kumar.

5. Per order dated 18.6.2011, following issues were struck by my Id. Predecessor:

1. Whether Non-Regularization of the petitioner after having put in 10 years service as on 01.5.1994 is illegal and unjustified as alleged. If so, to what relief the petitioner is entitled to?

..OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

..OPR

3 Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes, Partly No

Issue No.2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Shri Mohan Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he has raised the dispute only for the regularization of his services and he was regularized by the department/respondents on 22nd September, 2007. He admitted that his services have been regularized by the respondents as per the availability of the vacancy. He denied that the earlier Award has been implemented by the respondents in its totality and he has instituted a phoney petition. 9. Sh. Mohinder Singh (PW2) simply brought the record and proved Ex. PW1/G i.e. mandays chart relating to the petitioner.

10. Conversely, Shri Gulab Chand Bains, B.D.O., Drang at Padhar (respondent No.2) testified as RW1. He corroborated on oath the contents of the reply preferred by the respondents. In the cross-examination, he admitted that the services of the petitioner were initially engaged in the month of September, 1982 as a Supervisor on daily wages. He denied that the petitioner is entitled to the regularization of his services from the year 1992 onwards.

11. Ex. PW1/B is the copy of the letter dated 11.7.2005 written by the respondent No.2 to the respondent No.1 regarding the working pattern of the petitioner and payment of wages to him.

12. Ex. PW1/C is the copy of the Award dated 25.11.2004 pronounced by this Court in Reference No.89/2002 (RBT No.369/2004) titled as Mohan Singh vs. Block Development Officer & Anr.
13. Ex. PW1/D is the mandays chart pertaining to the petitioner.
14. Ex. PW1/E is the copy of a letter dated 14.12.2004 written by the respondent No.2 to the respondent No.1.
15. Ex. PW1/F is the copy of a letter dated 27.3.2006 sent by the respondent No.2 to the respondent No.1 regarding the representation made by the petitioner/workman for the regularization of his services.
16. Ex. R1 is the copy of an office order dated 22nd September, 2007 issued by the respondent No.1. It unfolds that the services of the petitioner were regularized as a Clerk alongwith the others.
17. Ex. RW1/A is the mandays chart relating to the petitioner. It corresponds to Ex. PW1/G.
18. Ex. RW1/B is also the mandays chart of the petitioner.
19. Ex. RW1/C is the copy of the advice given by the Department of Personnel to the effect that the services of an employee are to be regularized from prospective effect i.e. from the date the orders of regularization are issued after completion of all the codal formalities.
20. Ex. RW1/D is the copy of the office order dated 05/10/1995 issued by the respondent No.1 regarding the regularization of the services of S/Sh. Jathu Ram and others.
21. Ex. RW1/E is the final seniority list of Clerks of Rural Development Department as on 31.1.2010.
22. It is the admitted case of the respondents that the services of the petitioner were initially engaged as a daily waged beldar w.e.f. 12.8.1982. The fact that the services of the petitioner were terminated by the respondent No.2 on 01.5.1990 whereafter he raised the industrial dispute per Reference No.89/2002 is not in dispute. It is also an admitted fact that Reference No.89/2002 was decided in favour of the petitioner by this Court per Award dated 25.11.2004, the copy of which is Ex. PW1/C.
23. The version of the respondents is that the Award dated 25.11.2004 (Ex.PW1/C) has been implemented in its letter and spirit. Even the services of the petitioner have been regularized correctly vide office order dated 22nd September, 2007 (Ex.R1) as per the policies framed by the Government from time to time.
24. On the other hand, the petitioner has contended that he is entitled to the regularization of his services on completion of more than 10 years of work with 240 days in each calendar year w.e.f. 01.1.1994 in view of the observations made by the Hon'ble Apex Court in Mool Raj Upadhyaya vs. The State of Himachal Pradesh and Ors., 1994 Supp (2) SCC
25. In Mool Raj Upadhyaya's case it was held by the Hon'ble Supreme Court that daily wagers/muster roll workers shall be regularized in a phased manner on the basis of seniority cum suitability including physical fitness. As per the mandate of the Hon'ble Apex Court a daily wager

who has completed 10 years or more continuous service with a minimum of 240 days in a calendar year on 31.12.1993 shall be appointed as work-charged employee w.e.f. 01.1.1994 and shall be put in the time scale of the pay applicable to the corresponding lowest grade in the Government.

26. The seniority list Ex. RW1/E reveals that S/Sh. Kamal Singh, Suresh Kumar and Chater Singh (serial No. 7, 9 and 10), whose services were engaged by the respondents after the petitioner were confirmed/regularized by the respondents w.e.f. 23.12.1995. Since the persons junior to the petitioner were regularized by the respondents anterior to him, he (petitioner) is also entitled to the regularization from that date i.e. 23.12.1995. Even if, the services of the petitioner were disengaged by the respondent No.2 on 01.5.1990, the same will not come to the rescue of the respondents for the reason that by fiction of law the petitioner will be presumed to be in continuous service of the respondents in accordance with the Award dated 25.11.2004 (Ex. PW1/C) passed by this Court.

27. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been wrongly regularized as a Clerk by the respondents vide office order dated 22.9.2007 (Ex. R1). He is entitled to the regularization w.e.f. 23.12.1995, the date on which the persons junior to him were regularized/confirmed.

28. This issue is decided accordingly.

ISSUE NO. 2

29. Not pressed.

RELIEF (ISSUE NO. 3)

30. As a sequel to my findings on issue No.1, the present reference/claim petition succeeds in part and the same is partly allowed. The regularization of the services of the petitioner by the respondents w.e.f. 22.9.2007 is held to be bad in the eyes of law. Instead, he is entitled to the regularization w.e.f. 23.12.1995 alongwith all consequential service benefits. Parties to bear their own costs.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 41/2012

Date of Institution : 02.1.2012**Date of Decision : 13.09.2012**

Shri Nand Lal s/o Shri Lobhi Ram, r/o Village Sanour, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh.Nand Lal s/o Sh. Lobhi Ram, Village Sanour, P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 1st October, 1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600

retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.10.1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
..OPP
2. Whether the reference is not maintainable in the present form?
..OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
..OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?
..OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Nand Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the

petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.10.1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 46/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Panchu Devi w/o Shri Tek Chand, r/o VPO Kot, Tehsil Sarkaghat, District Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Panchu Devi w/o Shri Tek Chand, VPO Kot, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent in the year 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been reengaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll in the year 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
..OPP
2. Whether the reference is not maintainable in the present form?
..OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
..OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
..OPR
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?
..OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Smt. Panchu Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 11/2012
Date of Institution : 02.1.2012
Date of Decision : 13.09.2012

Shri Parkash Chand s/o Shri Roop Lal, r/o Village Mahehar, P.O. Cholthara, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Parkash Chand s/o Shri Roop Lal, r/o Village Mahehar, P.O. Cholthara, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 01.1.1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has reemployed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs. 50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.1.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs. 50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
..OPP
2. Whether the reference is not maintainable in the present form?
..OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
..OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

. .OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?

. .OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Parkash Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.1.1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 15/2010
Date of Institution : 16.1.2010
Date of Decision : 13.9.2012

Shri Partap Singh s/o Shri Lajju Ram, r/o Village Bhulang, P.O. Sudhar, Tehsil Padhar, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, I&PH Division Padhar, Distt. Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Partap Singh s/o Shri Lajju Ram, by The Executive Engineer, IPH Division Padhar, Distt. Mandi, H.P. w.e.f. 12.12.2000, without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the employer, is legal and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on the muster roll w.e.f. 21.6.1987. He was doing the work of public utility service by supplying the water to the public at large. More than 100 persons were employed by the respondent for the said purpose. He (petitioner) was working to the entire satisfaction of his superiors. On 12.12.2000, his services were illegally terminated by the respondent without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('the Act' for short) and the Rules framed there under. During the period of his employment, the respondent used to give him the artificial breaks. The break period is required to be counted towards his continuous service. At the time of his retrenchment by a verbal order no notice was served upon him (petitioner). The persons junior to him namely S/Sh. Sohan Singh, Tilak Raj and Ramesh Kumar etc. were retained in service by the respondent. The latter has failed to adhere to the principle of 'last come first go'. No casual cards and seniority list of the workers have been prepared and supplied to him (petitioner) by the respondent. His services have been disengaged by the respondent so as to favour the junior workmen. From the date of his retrenchment, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25- G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- “(i) That the oral illegal retrenchment/termination order dated 12.12.2000 may kindly be set aside & respondent employer may kindly be directed to re-engage/reinstate the applicant continuously with back wages & all consequential benefits.
- (ii) That the period of interrupted service may be counted towards continuous service & respondents/employer may be directed to consider the period of his continuous service for the purpose of work charge status/regularization in accordance with law, with all consequential benefits.
- (iii) And or any other relief for which the applicant is found entitled may also be granted in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition suffers from the vice of delay and laches. In the month of

December, 2000, the petitioner abandoned the job of his own. The instant industrial dispute was raked up by him in the month of September, 2004 i.e. after the lapse of six years. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 21.6.1987. The petitioner worked intermittently. His mandays chart is annexure R-I. Neither any fictional breaks were provided to the petitioner nor his services were dispensed with as alleged. Actually, the petitioner used to work as per his sweet will and left the service of his own in the month of December, 2000. The mandays chart (annexure R-I) shows the working pattern of the petitioner. He worked only for 24 days in the year 1987, 55 days in the year 1988, 53 days in 1993, 38 days in 1998, 133 days in 1999 as well as 211 days in the year 2000. The petitioner is gainfully employed as an agriculturist. He cannot claim parity with the workmen who worked with him (respondent) continuously. The seniority list is attached as annexure R-II to the reply. Since the petitioner abandoned the job of his own accord and free will he is not entitled to any protection under the Act. He has not been victimized as claimed. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he did not abandon the job. Before terminating his services neither any notice was served upon him by the respondent nor an inquiry was conducted against him.

5. Per order dated 08.6.2011, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner is violative of the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act, 1947 as alleged. If so, to what relief the petitioner is entitled to?

. .OPP

2. Whether the reference is not maintainable as alleged. If so, to what effect?

. .OPR

3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?

. .OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes Partly No

Issue No.2 : Not pressed

Issue No.3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

8. The petitioner Shri Partap Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that he had joined the service in the year 1987. He was removed from service in the month of November, 2000. He

admitted that the present industrial dispute was raised by him in the year 2010. Self stated, earlier he had approached the Hon'ble Administrative Tribunal. He denied that he used to work as per his convenience and sweet will because of which he could not complete 240 days of work in any year of his employment. He also denied that after the month of November, 2000, he left the job of his own. He owns the agricultural land. He denied that he makes both the ends meet by doing the work of agriculture.

9. Conversely, Shri Arun Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that after the disengagement of the services of the petitioner new labour has been employed. He admitted that at the time of engaging new/fresh hands an opportunity of re-employment was not afforded to the petitioner. No notice was served upon the petitioner calling upon him to resume his duties after he left the job. He denied that artificial breaks used to be given to the petitioner.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the seniority list of daily wage workers as on 31.12.2009 of the office of the respondent. Ex. RW1/C is the copy of the demand notice.

12. No reference has been received from the appropriate Government regarding providing the artificial breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

13. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 21.6.1987 and he worked intermittently up-to 11.12.2000. The version of the petitioner is that his services were terminated by the respondent w.e.f. 12.12.2000. While denying the said fact the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition. It is common knowledge that the abandonment has to be proved by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Willful absence from duty is serious misconduct. There is nothing on the record to show that some disciplinary action was initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

14. The mandays chart Ex. RW1/A goes to show that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 12.12.2000. Thus, the provisions of Section 25-F of the Act are not attracted in this case.

15. It has come in the statement of the respondent (RW1) that after the disengagement of the petitioner new labour was employed. He admitted that before engaging new/fresh hands an opportunity of re-employment was not afforded to the petitioner. Not only this, from the seniority list Ex. RW1/B placed on the file coupled with the admissions made by the respondent (RW1) it can be gathered that the persons junior to the petitioner are serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. That being so, the action of the respondent contravenes the provisions of Sections 25-G and 25-H of the Act. Needless to say that for deriving the benefit under the said Sections, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

16. Such being the situation, it is held that the services of the petitioner were wrongly and illegally dispensed with by the respondent.

17. This issue is decided accordingly.

ISSUE No.2

18. Not pressed.

ISSUE NO.3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. The petitioner (PW1) in his cross-examination admitted that he owns the agricultural land. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

22. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 12.12.2000 except back wages. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 16/2010

Date of Institution : 16.1.2010

Date of Decision : 13.9.2012

Shri Prem Singh s/o Shri Khema Ram, r/o Village Rolina, P.O. Boaching, Tehsil Padhar,
Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, I&PH Division Padhar, Distt. Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Prem Singh s/o Sh. Khema Ram, by The Executive Engineer, IPH Division Padhar, Distt. Mandi, H.P. w.e.f. 03.11.2002, without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the employer, is legal and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on the muster roll w.e.f. 21.10.1996. He was doing the work of public utility service by supplying the water to the public at large. More than 100 persons were employed by the respondent for the said purpose. He (petitioner) was working to the entire satisfaction of his superiors. On 03.11.2002, his services were illegally terminated by the respondent without complying with the mandatory provisions of the Industrial Disputes Act, 1947 ('the Act' for short) and the Rules framed there under. During the period of his employment, the respondent used to give him the artificial breaks. The break period is required to be counted towards his continuous service. At the time of his retrenchment by a verbal order no notice was served upon him (petitioner). The persons junior to him namely S/Sh. Sohan Singh, Tilak Raj and Ramesh Kumar etc. were retained in service by the respondent. The latter has failed to adhere to the principle of 'last come first go'. No casual cards and seniority list of the workers have been prepared and supplied to him (petitioner) by the respondent. His services have been disengaged by the respondent so as to favour the junior workmen. From the date of his retrenchment, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

- “(i) That the oral illegal retrenchment/termination order dated 03.11.2002 may kindly be set aside & respondent employer may kindly be directed to re-engage/reinstate the applicant continuously with back wages & all consequential benefits.
- (ii) That the period of interrupted service may be counted towards continuous service & respondents/employer may be directed to consider the period of his continuous service for the purpose of work charge status/regularization in accordance with law, with all consequential benefits.
- (iii) And or any other relief for which the applicant is found entitled may also be granted in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition suffers from the vice of delay and laches. In the month of December, 2002, the petitioner abandoned the job of his own. The instant industrial dispute was raked up by him in the month of August, 2010 i.e. after the lapse of eight years. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 21.10.1996. The petitioner worked intermittently. His mandays chart is annexure R-I. Neither any fictional breaks were provided to the petitioner nor his services were dispensed with as alleged. Actually, the petitioner used to work as per his sweet will and left the service of his own in the month of December, 2002. The mandays chart (annexure R-I) shows the working pattern of the petitioner. He worked only for 53 days in the year 1996, nil days in the year 1997, 14 days in the year 1998 nil days in the years 1999, 2000 and 2001 as well as 60 days in the year 2002. The petitioner is gainfully employed as an agriculturist. He cannot claim parity with the workmen who worked with him (respondent) continuously. The seniority list is attached as annexure R-II to the reply. Since the petitioner abandoned the job of his own accord and free will, he is not entitled to any protection under the Act. He has not been victimized as claimed. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he did not abandon the job. Before terminating his services, neither any notice was served upon him by the respondent nor an inquiry was conducted against him.

5. Per order dated 08.6.2011, following issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner is violative of the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act, 1947 as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
.. OPR
4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Prem Singh stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he did not complete 240 days of work in any year of his employment. He also denied that he left the service voluntarily. He owns the agricultural land. He admitted that he works privately as a wood cutter to earn the livelihood. He denied that he is not entitled to the re-employment as he abandoned the job.

10. Conversely, Shri Arun Sharma, Executive Engineer, I&PH Division, Padhar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that after the disengagement of the services of the petitioner new labour has been employed. He admitted that at the time of engaging new/fresh hands an opportunity of re-employment was not afforded to the petitioner. No notice was served upon the petitioner calling upon him to resume his duties after he left the job. He denied that artificial breaks used to be given to the petitioner.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the seniority list of daily wage workers as on 31.12.2009 of the office of the respondent.

13. No reference has been received from the appropriate Government regarding providing the artificial breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be gone into by this Court being beyond the terms of the reference.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 21.10.1996 and he worked intermittently up-to the month of November, 2002. The version of the petitioner is that his services were wrongly and illegally terminated by the respondent w.e.f. 03.11.2002. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition in the month of December, 2002. Mandays chart Ex. RW1/A of the petitioner has been placed on the file by the respondent. It is not the case of the petitioner that the mandays chart produced by the respondent is incorrect. The perusal of the mandays chart (Ex. RW1/A) reveals that the petitioner had worked for 30 days in the month of November, 2002 i.e. from 1.11.2002 to 30.11.2002. Since the petitioner served the respondent/department up-to 30.11.2002 the question of the termination of his services w.e.f. 03.11.2002 (as alleged), does not arise. As no retrenchment/termination order was passed by the respondent on 01.11.2002, I am at a loss to understand as to how it lies in the mouth of the

petitioner to say that his termination ordered by the respondent on that date i.e. 03.11.2002 is illegal and unjustified. The claim put forth by the petitioner is not maintainable. The same is fallacious. He is not entitled to any relief.

15. These issues are decided against the petitioner and in favour of his opponent.

ISSUE NO. 3

16. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

18. This issue is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

19. As a sequel to my findings on the above issues, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 1/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Raj Kumar s/o Shri Sohan Singh, r/o Village Bhatour, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh.Raj Kumar s/o Sh. Sohan Singh, Village Bhatour, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 1st March, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. 01.3.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.4.2012, following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
..OPP
 2. Whether the reference is not maintainable in the present form?
..OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
..OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?
..OPR
6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Shri Raj Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.3.1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. :74/2007

Date of Institution :26.6.2007

Date of Decision :14.9.2012

Shri Raj Kumar s/o Shri Lala Ram, r/o Village Chandyal, P.O. Gagat, Tehsil Sadar, District Mandi, H.P.

....Petitioner

Versus

1. The Director, Sainik Welfare Department, Hamirpur, District Hamirpur, H.P.

2. The Chairman (Deputy Commissioner), District Sainik Board, Mandi, District Mandi, H.P.
 3. The Deputy Director, Sainik Welfare Department, Mandi, District Mandi, H.P.
-Respondents

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Gupta, Adv.
 For the Respondents : Sh. Laxman Thakur, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Raj Kumar s/o Shri Lala Ram workman by the (1) The Director, Sainik Welfare Department, Hamirpur, District Hamirpur, H.P. (2) The Chairman (Deputy Commissioner), District Sainik Board, Mandi, District Mandi, H.P. (3) The Deputy Director, Sainik Welfare Department, Mandi, District Mandi, H.P. w.e.f. 16.7.2005 without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitle to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged Chowkidar by the President, District Sainik Welfare Board, Mandi (respondent No.2) in Sainik Rest House, Mandi. Appointment order/letter dated 14th August, 2001 was issued in his name by the respondent No.2. He (petitioner) continuously worked as a daily wager in Sainik Rest House, Mandi which is under the administrative control of the respondent No.3. On 16th June, 2005, he received a warning letter from the respondent No.3 with regard to the cleanliness of the premises of the rest house. Reply to this letter was submitted by him. As the respondent No.3 was not satisfied with the reply, the termination letter (annexure P1) was issued by him. In accordance with this letter his (petitioner's) services were terminated w.e.f. 16th July, 2005. He served continuously from August, 2001 to 15th July, 2005 to the utmost satisfaction of his superiors. His services have been disengaged by the respondent No.3 without holding an inquiry and in violation of the principles of natural justice. Moreover, the act and conduct of the respondents amounts to unfair labour practice. At the time of the termination of his services, the mandatory provisions of the Industrial Disputes Act, 1947 ('the Act' for short) were not followed by the respondents. Per letter dated 01.12.2004, the respondent No.1 has changed the service conditions of the daily waged employees in contravention of Section 9-A of the Act. After his illegal termination, he (petitioner) sent a demand notice dated 18th July, 2005 to the respondents. Copy of the demand notice was also forwarded by him to the Labour-cum-Conciliation Officer, Mandi. The conciliatory efforts made by the Conciliation Officer failed. As per the rules, only the respondent No.1 is the competent authority to terminate his services. His (petitioner's) services have been dispensed with wrongly and illegally by the respondent No.3. Before his disengagement, neither any notice was served upon him nor the retrenchment compensation was paid. The respondent No.1 has not maintained the seniority list of the employees. A new person has been engaged in his (petitioner's) place. The persons junior to him are serving the respondents.

As such, he (petitioner) prays that the termination order be set aside. The respondents be directed to reinstate him in service with all consequential benefits including the seniority and the payment of back wages etc.

3. On notice, the respondents appeared. No reply has been submitted by the respondents Nos. 1 and 2.

4. The respondent No.3 in his reply has owned the facts that the services of the petitioner were engaged as a daily waged Chowkidar in Sainik Rest House, Mandi per appointment letter dated 14th August, 2001 and he worked continuously as such up-to 15th July, 2005. However, it has been pleaded that during the period of employment the work and conduct of the petitioner never remained satisfactory. Various verbal and written complaints were received against him from time to time. He was asked orally several times as well as by way of the written letters to mend his behaviour, but in vain. They (respondents) were then forced to take legal action against him as per the terms and conditions of the appointment letter. Summary inquiry was conducted against the petitioner. At the time of joining the service, the petitioner had duly accepted the terms and conditions of the appointment as contained in the appointment letter. The petitioner has been removed from service on account of his misbehavior and dereliction of duties. He cannot take undue advantage of his wrongs. The service conditions were not changed as alleged. No provision of the Act has been infringed. The respondent No.1 has delegated the powers to the respondents No. 2 and 3. The story put forth by the petitioner is false and concocted one. No person junior to him has been retained in service or employed. The petitioner is not entitled to any relief in accordance with the terms and conditions of his service as detailed in the appointment letter. In these circumstances, the respondent No.3 prays that the petition in hand be dismissed with heavy costs.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the contesting respondent No.3. It has been pleaded that no complaint (except the warning letter) was received against him.

6. Per order dated 08.7.2010, following issues were struck by my ld. Predecessor:

1. Whether the termination of the services of the petitioner w.e.f. 16.7.2005, without holding any inquiry and complying with the provisions of the I.D. Act is illegal and unlawful. If so to what relief the petitioner is entitled to?

. .OPP

2. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

9. The petitioner Shri Raj Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that he does not know that his services were engaged on contract basis and the contract period used to be of 89 days. He is not aware of the fact that the contract was being renewed after every 89 days. He admitted that at the time of joining the service, he had agreed to all the terms and conditions of his engagement as contained in the appointment letter. He does not know that during the period of his employment,

several persons had complained against him and his services were engaged temporarily. He admitted that the reply Mark-I was given by him to one of the complaints. Self stated, the said complaint was found to be false. He denied that he has given a phoney statement.

10. Conversely, Shri Basant Singh Bhardwaj, Dy. Director, Sainik Welfare, Mandi (respondent No.3) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him. In the cross-examination, he admitted that the petitioner worked continuously from the year 2001 to 15.7.2005. Self stated, the services of the petitioner used to be engaged for 89 days on contract basis and, thereafter, the breaks were being given. He admitted that no inquiry was conducted against the petitioner. Before the termination of the services of the petitioner, neither any notice was served upon him nor the compensation was paid.

11. Ex. PW1/B is the copy of the termination notice dated 15th July, 2005 served upon the petitioner by the respondent No.3. It unfolds that the services of the petitioner were disengaged from the very next day i.e. 16.7.2005.

12. Ex. PW1/C is the copy of the appointment order/letter dated 14.8.2001 issued by the respondent No.2 in the name of the petitioner.

13. Ex. PW1/D is the copy of the letter written by the respondent No.1 to the petitioner. As per this letter, the respondent No.1 intimated the petitioner that the seniority list of chowkidars employed in the Sainik Rest Houses is not maintained as the watchmen are paid from the local fund viz. Sainik Rest Fund.

14. Ex. RW1/E is the copy of the letter dated 22.10.2005 written by the respondent No.3 to the petitioner. It reveals that 15 days salary for the month of July, 2005 was paid to the petitioner by way of a cheque.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a Chowkidar in Sainik Rest House, Mandi per appointment letter dated 14.8.2001, the copy of which is Ex. PW1/C. It is also an admitted fact that the petitioner served the respondents regularly from the date of his joining i.e. 17.8.2001 to 15.7.2005.

16. The version of the respondents is that the services of the petitioner were terminated per letter dated 15.7.2005 (Ex. PW1/B) w.e.f. 16.7.2005 as his work and conduct was not satisfactory as well as various complaints were received against him from different people. Shri Basant Singh Bhardwaj (RW1) in his cross-examination admitted that before the termination of the services of the petitioner no inquiry was carried out against him.

17. From the evidence available on the record including the admissions made by the respondents, it can be gathered that the petitioner served as a Chowkidar regularly from the date of his joining i.e. 17.8.2001 to 15.7.2005. It is not the case of the respondents that the petitioner did not work for 240 days in any calendar year of his employment or in a block of 12 calendar months preceding the date of his termination.

18. Section 25-F of the Act postulates as under:-

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

19. There is not even an iota of the evidence on the file to establish that the mandatory provisions of the above quoted Section were complied with by the respondents. Rather, RW1 admitted during the crossexamination that before the disengagement of the services of the petitioner neither any notice was given to him nor the compensation was paid. As already mentioned, it is the admitted case of the respondents that no proper inquiry was conducted against the petitioner before his removal from service.

20. That being so, I have no hesitation to conclude that the services of the petitioner have been wrongly and illegally terminated by the respondents. The termination letter/notice dated 15.7.2005 (Ex. PW1/B) is bad in the eyes of law.

21. So far as the payment of back wages to the petitioner is concerned, I will like to say that while testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

22. This issue is decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE NO.2)

23. As a sequel to my findings on issue No.1, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondents are directed to reengage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.7.2005 except back wages. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 28/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Ramesh Chand s/o Shri Dev Raj, r/o Village Malhi Banwar, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Ramesh Chand s/o Shri Dev Raj, Village Malhi Banwar, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent in the year, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come

first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has reemployed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year, 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.4.2012, following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? . .OPP
 2. Whether the reference is not maintainable in the present form? . .OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . .OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . .OPR
 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . .OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes
 Issue No.2 : Not pressed
 Issue No.3 : No
 Issue No.4 : Not pressed.
 Issue No.5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Shri Ramesh Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged

beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year, 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum- Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 19/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Ranjit Singh s/o Shri Jagar Nath, r/o Village Tarun, P.O. Samouda, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh.Ranjit Singh s/o Sh. Jagar Nath, r/o Village Tarun, P.O. Samouda, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. November, 1998. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600

retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. November, 1998 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?
..OPP
2. Whether the reference is not maintainable in the present form?
..OPR
3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?
..OPR
4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?
..OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?
..OPR
6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

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REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Shri Ranjit Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, hereiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her

services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. November, 1998 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 18/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Riyaz Khan s/o Shri Nurdeen, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Shri Riyaz Khan s/o Shri Nurdeen r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. July, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has reemployed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and

conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act.

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon’ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon’ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon’ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. July, 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 10.4.2012, following issues were struck:-
 1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

..OPP

- Issue No.1 : Yes
Issue No.2 : Not pressed
Issue No.3 : No
Issue No.4 : Not pressed.
Issue No.5 : Not pressed.
Relief. : Claim petition allowed in part vide operative portion of the Award.

ISSUE NO.1

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. July, 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs. 17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 21/2010
Date of Institution : 26.2.2010
Date of Decision : 25.9.2012

Shri Roop Lal s/o Shri Sher Singh, r/o Village Dughta, P.O. Madhi, Sub Tehsil Sandhol,
District Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, Distt. Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination from daily wage job of Shri Roop Lal s/o Shri Sher Singh workman by the Executive Engineer, HPPWD, Mandi Division No.1, Mandi, H.P. without complying with Sections 25-F, 25-G and 25-H of The Industrial Disputes Act, 1947 and retention of junior workmen as alleged by the concerned workman is legal & justified? If not, to what back wages, service benefits and relief of Shri Roop Lal s/o Shri Sher Singh workman is entitled to?”

2. Subsequently, a corrigendum was received which reads thus:-

“In the notification “The Executive Engineer, H.P.P.W.D. Mandi, Division No.1, Mandi, H.P.” be read as “The Executive Engineer, HPPWD (B&R) Division Dharampur, Distt. Mandi, H.P”.

3. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar by the respondent in the month of July, 1998. Thereafter, he was designated as a helper in the month of August, 1998. Muster Roll of driver was issued in his name in the month of October, 1998. He worked continuously as such up-to 06.3.2002 under the Assistant Engineer, Sub Division, Marhi to the entire satisfaction of his superiors. From October, 1998 onwards he was discharging the duties as a JCB driver but the muster roll of beldar was issued in his name. In March, 2002, he requested the Assistant Engineer to issue the muster roll of driver, but in vain. On 06.3.2002, the respondent did not allow him to work as a driver or beldar. His services were terminated by a verbal order by the Assistant Engineer on that date i.e. 06.3.2002. Before the termination of his services neither any show cause notice was served upon him nor he was charge-sheeted. Even no inquiry was conducted against him for the misconduct if any. One month pay in lieu of the notice period and retrenchment compensation were also not paid to him. He had completed more than 240 days of work in the years 1999 to 2001 as well as in a block of 12 calendar months preceding the date of his retrenchment. At the time of his termination, the persons junior to him namely Sh. Suresh Kumar, Sh. Gian Chand, Smt. Damodri Devi, Smt. Rampa Devi, Smt. Roshani Devi and Sh. Shashi Kant s/o Sh. Bihari Lal etc. were retained in service by the respondent. The latter has failed to adhere to the principle of ‘last come first go’. Not only this, after his termination, one Shri Ajay Kumar s/o Shri Inder Singh was appointed by the respondent on 01.12.2003. At the time of the engagement of new/fresh hands, an opportunity of re-employment was not afforded to him (petitioner). After the termination of his services he approached the respondent and the Assistant Engineer time and again for re-engagement, but without any success. Then the demand notice dated 27.3.2006 was served upon the respondent by him. In the month of January, 2004 more than 1600 daily waged workers of different categories were removed from service by the respondent. Those workers were also paid the retrenchment compensation. In August/September, 2004, some of the retrenched workmen have been re-engaged by the respondent. After that, on 07.7.2005, 1087 daily waged workers were

terminated by the respondent. Those workers challenged the termination order dated 07.7.2005 which has already been set aside. The workers have been ordered to be reinstated in service by this Court and the Hon'ble High Court of Himachal Pradesh. Not only this, the Hon'ble High Court has directed the respondent to pay Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. The act and conduct of the respondent is highly illegal and unjustified. The same is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short). From the date of his disengagement, he is unemployed.

As such, he (petitioner) prays that the illegal termination order dated 06.3.2002 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity and payment of back wages etc.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily wager in the month of July, 1998 and he served the department regularly up-to the month of March, 2002. The petitioner was not removed from service as alleged. Actually, he left the job of his own. No person junior to the petitioner has been retained in service. Even new/fresh hands have not been employed. Since the petitioner left the job willingly, he did not approach him (respondent) for re-employment. No provision of the Act has been flouted. It stands admitted that the services of many other daily wagers were ordered to be dispensed with as well as they have been ordered to be re-instated in service. The fact that the Hon'ble High Court has directed him (respondent) to pay Rs.50,000/- as compensation to each and every retrenched workman in lieu of the back wages etc. has been admitted. The fact that the petitioner is unemployed from the date of his disengagement has been denied for want of knowledge. In these circumstances, the respondent prays that the petition in hand be rejected.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

6. Per order dated 21.1.2012, following issues were struck by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f.06.3.2002 is violative of the provision of Sec. 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?
..OPP
2. Whether the reference is not maintainable as alleged. If so, to what effect?
..OPR
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect?
..OPR
4. Relief.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 :	Not pressed
Issue No.3 :	No
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

9. The petitioner Shri Roop Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he left the service of his own. He served the respondent/department from July, 1998 to March, 2002. He admitted that the present industrial dispute was raked up by him in the year 2006. He denied that he makes both the ends meet by doing the private job. He admitted that he owns the agricultural land. He denied that he is not entitled to the re-employment etc. since he abandoned the job.

10. Conversely, Shri Prakash Chand, Executive Engineer, HPPWD Division, Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. He also stated that the petitioner worked for only 6 days in the month of March, 2002 and, thereafter, did not report for duty despite the fact that the muster roll for the whole month was issued in his name. The workmen whose names have been disclosed by the petitioner, served the department continuously and did not leave the job. In the cross-examination, he admitted that no notice was given to the petitioner after he left the service. Even no inquiry was conducted against him. He admitted that the persons junior to the petitioner are working under him. He also admitted that Shri Ajay Kumar s/o Shri Hari Chand was appointed on 01.12.2003. At the time of his engagement, no notice of reemployment was served upon the petitioner. Self stated, Shri Ajay Kumar has been employed on compassionate grounds. He admitted that the labourers whose services were engaged on 01.1.1999 are serving the department and their services have been regularized.

11. Ex. PW1/B is the copy of the demand notice dated 24.3.2006 served upon the respondent by the petitioner.

12. Ex RW1/A is the mandays chart relating to the petitioner.

13. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar in the month of July, 1998 and he worked continuously as such up-to 06.3.2002. The version of the petitioner is that on the said date, his services were terminated by a verbal order passed by the Assistant Engineer. While denying the said fact, the respondent has pleaded that the petitioner left the service of his own accord and free volition.

14. It is the basic law that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. The statement made by the respondent (RW1) goes to show that no disciplinary proceedings were initiated against the petitioner for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

15. The mandays chart Ex. RW1/A clarifies that the petitioner had worked for more than 240 days in a block of 12 calendar months preceding the date of his termination i.e. 06.3.2002 as envisaged under Section 25-B of the Act.

16. Section 25-F of the Act postulates as under:-

“25-F. **Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

17. There is not even an iota of evidence on the record to prove that the mandatory provisions of above quoted Section were complied with by the respondent before the termination of the services of the petitioner.

18. The statement made by the respondent (RW1) clarifies that the persons junior to the petitioner are serving under him. The workmen whose services were engaged on 01.1.1999 have been regularized. This indicates that the respondent has failed to abide by the principle of 'last come first go'.

19. Not only this, RW1 admitted that on 01.12.2003 i.e. after the retrenchment of the petitioner, the services of one Shri Ajay Kumar s/o Shri Hari Chand were engaged. No notice of re-employment was given to the petitioner at the time of the engagement of the services of Shri Ajay Kumar.

20. The evidence available on the file makes it crystal clear that the respondent has contravened the provisions of Sections 25-F, 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

21. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

22. Not pressed.

ISSUE NO. 3

23. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

25. While testifying in the Court as PW1, the petitioner has given his age as 41 years. In the cross-examination, he admitted that he owns the agricultural land. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For this reason, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

27. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 06.3.2002 except back wages. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 365/2009
Date of Institution : 18.7.2009
Date of Decision : 25.09.2012

Smt. Sarla Devi w/o Shri Kanshi Ram, r/o Village Koon, P.O. Taur Khola, Tehsil Sarkaghat, District Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
 For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Sarla Devi w/o Shri Kanshi Ram by the Executive Engineer, H.P.P.W.D. Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f.08.7.2005 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

- “1. That the services of applicant were engaged by the respondent on muster rolls on daily waged basis as Beldar in the year 1999 and the applicant had been continuously worked as such on 07.07.2005 without any break.
2. That on 08.07.2005 the services of applicant have been retrenched by the respondent with retrenchment notice under section 25-N of the Industrial Disputes Act, 1947 alongwith retrenchment compensation vide bank draft dated 02.07.2005/04.07.2005 but not at the time of her retrenchment dated 08.07.2005 and one month notice under section 25-F (a) has not served to the applicant and the payment of one month in lieu of notice period has not made to the applicant alongwith bank draft dated 02.07.2005 or at the time of termination. It is submitted that respondent has violated the procedure of payment made to applicant as 3 month notice payments as under section 25-N or retrenchment compensation as paid under section 25-F(b) of the Industrial Disputes Act, 1947 not paid at the time of retrenchment i.e., 08.07.2005, and as such procedure is laid down under the Industrial Disputes Act, 1947 all the payments in case of retrenchment have been made to the applicant/workman at the time of retrenchment not before or latter on and the termination of the applicant is null and void.
3. That the applicant has been completed more than 240 days in each calendar year from 1998 to 08.07.2005 and as well as also completed 240 days in the twelve calendar preceding months from the date of his illegal retrenchment.
4. That before termination the services of applicant the respondent has not given the seniority list of daily wagger who were working under the respondent in Dharampur Division and the applicant has also not signed the seniority list before retrenchment his services. Whereas the 35 persons junior to him namely S/Sh. Subhash Chand s/o Shri Bhagat Ram, Shashi Kant s/o Shri Bihari Lal r/o Vill. Kalswai, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P., Bidhi Chand s/o Shri Nek Ram, Dharampal s/o Shri Sarwan Ram, VPO Brang etc have been appointed by the respondent on daily waged basis as Beldar in the month of November 1998 and the services of S/Shri Shashi Kant (01-01-2000), Inder Singh s/o Shri Narain Singh (01-01-2000), Ajay Kumar s/o Shri Hari Chand (01-12-2003) and Smt. Roshani Devi w/o Shri Nag Ram (04-07-1999) have not been

retrenched alongwith applicant and all the above named workmen retained in service, as such at the time of retrenchment the respondent has not followed the procedure of "Last Come First Go" and same has been violated under section 25-G of the Industrial Disputes Act, 1947. The respondent has not only violated the section 25-G but also violated the principle of natural justice.

5. That in the year 2004, the respondent issued notice under Section 25-F of the Industrial Disputes Act to the daily waged workmen on 23.01.2004 stating therein that the services of the workmen would be terminated w.e.f. 09.02.2004. Against and being aggrieved by the above mentioned notice, number of daily waged workmen preferred a writ petition before the Hon'ble High Court of Himachal Pradesh. The daily waged workmen were reengaged back into service.
6. That the State of Himachal Pradesh vide notification dated 07-09-1992 and as per the powers conferred under clause B of Section 39 of the Industrial Disputes Act have notified the Labour Commissioner, Himachal Pradesh to be the specified authority in connection with the powers exercisable by the State Government under section 10, 12(5), 25(M), 25(N), 25(O) and Section 33-C (1) of the Industrial Disputes Act.
7. That the respondent with a malafide intention and in an illegal and arbitrary manner started the process of retrenching about 1636 daily waged workmen out of a total of 2049 workmen working under the respondent Division. In the process, the State Government vide notification dated 14.02.2005 modified the earlier order dated 07.09.1992 and instead of the Labour Commissioner conferred the powers of the specified authority to the Chief Engineer of the HPPWD, B&R. In the present matter, the Chief Engineer, Mandi was notified as the specified authority. Against this action of the State of Himachal Pradesh, number of daily waged workmen working under the respondent filed writ petitions in the Hon'ble High Court of Himachal Pradesh. At the same time, respondent issued notices under Section 25-N of the Industrial Disputes Act to the workmen and sought permission for retrenchment from the specified authority that was the Chief Engineer HPPWD Central Zone Mandi during the pendency of the writ petitions the respondent retrenched the daily waged workmen on 08.7.2005, and during the pendency of the dispute before the Hon'ble High Court of H.P. the respondent has not filed the application before High Court to grant the permission to retrenchment the daily wagger and the same has been violated under section 33-(b) (2) of the Industrial Disputes Act, 1947.
8. That in the writ petitions, the main challenge of the workmen was that, the Chief Engineer who has been notified vide notification dated 14.02.2005 as the specified authority, is against the basis provisions of Law, arbitrary and illegal as the Chief Engineer is a superior authority to the Executive Engineer and is indirectly the employer of the workmen. The workmen pleaded that the employer himself would adjudicate upon the claim of the workers which is not the intent of the Act. The matter was heard by the Hon'ble High Court. The State during the pendency of the writ petition rescinded the notification making the Chief Engineer, Central Zone as specified authority and re-notified the Labour Commissioner as the specified authority. The Hon'ble High Court at the same time directed the workmen to approach the appropriate authority as per law against their retrenchment and the appropriate authority would decide the issue at the earliest.

9. That the notice under Section 25-N as issued by the respondent to the applicant alongwith other workmen is bad in the eyes of law, and the retrenchment of the workmen is liable to be quashed and set aside. Section 25-N pertains to an Industrial Establishment and certain conditions precedents prior to retrenchment of the workmen have been prescribed therein. Section 2(Ka) of the Industrial Disputes Act deals with the definition of Industrial Establishment or undertaking which means an establishment or undertaking in which any industry is carried on. A bare reading of the Act would show that the Public Works Department is not an Industrial Establishment as defined under Section 2 (Ka) of the Industrial Disputes Act and as such the notices under Section 25-N of the Industrial Disputes Act issued to the applicant alongwith other workmen are bad in the eyes of law and as such are liable to be quashed and set aside.
10. That the Chief Engineer acting as a specified authority has given permission to retrench the daily waged workmen working under the respondent and the petition in the High Court was also filed on this plea only. The respondent State has withdrawn the notification on the asking of the Hon'ble High Court. This itself vitiates the order as passed by the Chief Engineer and it is null and void as the Chief Engineer had no authority to give permission for retrenchment of the daily waged workmen working under the respondent. This renders the notices under Section 25-N issued to the applicant as null and void and as such are liable to be quashed and set aside.
11. That the order of retrenchment and the notices under Section 25-N are liable to be quashed and set aside on the ground that it is only respondent who has retrenched daily waged workmen whereas there are surplus workmen in Mandi Division No. I & II, Sundernagar Division, Sarkaghat Division, Joginder Nagar Division and Kullu Division I & II. There are surplus workmen in Bilaspur Division No. I & II. All over the State of Himachal Pradesh, there is always surplus labour which is required for day to day maintenance of the roads and the necessary infrastructure. Daily waged workmen of Dharampur Division have been discriminate against and have been retrenched from work. The notices under Section 25-N and the retrenchment of the applicant is liable to be quashed and set aside with all consequences.
12. That the respondent have issued the notice of retrenchment and thereby retrenched the applicant alongwith other workmen of Dharampur Division in an illegal manner despite the fact the respondent have sufficient work on the various State and Central Schemes. Respondent has deliberately getting the work to contractors and has not giving work to the applicant and others workmen who have been illegally retrenched. It is submitted here before retrenchment the services of applicant the applicant alongwith other workmen have been engaged by the respondent in the particular works and same has not completed by the applicant alongwith other workmen as on 08.07.2005 and the said works have been completed by the contractors and respondent cannot be say the works was not available with the respondent and even after retrenchment the services of the applicant alongwith other workmen the respondent has been given the tenders/works orders to the various contractors continuously till today and after retrenchment the services of applicant alongwith other workmen the respondent have been completed the so many works through contractors labours in various Sub Division as like Dharampur, Mandap and Marhi.

13. That while retrenching the services of applicant alongwith other workmen, respondent has not followed the law and even otherwise, the permission given by the Chief Engineer is not valid permission and thus renders the retrenchment illegal.
14. That it is submitted here the respondent have been retrenched the applicant alongwith other daily waged total of 997 beldars, 35 masons and 55 blacksmith w.e.f. 08.07.2005 is illegal, without any authority of law and is liable to be quashed and set aside. The workman is liable to be reinstated back into service with all consequential service benefits including seniority, pay and salary, and also entitled his regularization as per the policy framed by the State Government from time to time as such the daily wagger who were working alongwith applicant and have been appointed as on June 1998 have been regularized by the respondent in their cadre post in the regular pay scale as applicable to him in the cadre post.
15. That Smt. Mamta Devi w/o Late Shri Hans Raj r/o Village Gehra, P.O. Saklana, Tehsil Sarkaghat, District Mandi, H.P. was appointed by the respondent in the year 2000 and she is junior to applicant and her services has also been retrenched by the respondent alongwith applicant w.e.f. 08.07.2005. But her services again reengaged by the respondent in the year 2007 and she is still working with the respondent/department but the applicant has not given any opportunity for reemployment under the Rule 78 of the Central Industrial Disputes Rules 1957 and the same has been violated under Section 25-H of the Industrial Disputes Act, 1947.
16. That it is stated here that after termination the services of applicant the applicant is still unemployed and not gainfully employed anywhere and the payment of back wages on the said ground is justified.

Reliefs:

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

1. That the Hon'ble Court kindly be set aside the retrenchment order under section 25-N of the Industrial Disputes Act, 1947 passed by the Chief Engineer (CZ) Mandi to granted the permission to the respondent to retrench the applicant alongwith other workmen.
2. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 08.07.2005 and again directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
3. The Hon'ble Court further directed to respondent to regularized the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
4. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the reference/ claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct. On merits, paras 1 to 16 of the reply are reproduced below verbatim:

1. That the contents of this para are admitted.
2. That the contents of this para are partly admitted, thereby the Chief Engineer-Cum-Specified Authority were exercising the powers of the Labour Commissioner in their respective zone under section 10.12(5)25(M), 25(N), 25(a) and section 33 of the Act as Specified Authority. But contention of the applicant about the present controversy is not based on law and facts. The retrenchment of the daily wages workers has been done as per decision given by the Specified Authority-Cum-Chief Engineer (CZ) Mandi while exercising the power of Specified Authority for (CZ) after giving the three months basic pay in lieu of notice and retrenchment compensation as provided under rule. The reply of the CWP No.486/2005 be also read with this reply of demand notice. The termination of the applicant is legal and valid as per law and nothing survives in the interest of the applicant as they have been paid the retrenchment compensation as per provisions of law after being given opportunity of being heard.
3. That the contents of this para are denied. The retrenchment has been made as per provisions of the Industrial Disputes Act, 1947.
4. That the contents of this para partly admitted, and it is submitted that some Junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.
5. That the contents of this para are denied. That during the month of February-2004 the matter was settled all the writ petitions made by the workers of Dharampur Division HP. PWD Dharampur were disposed off by the Hon'ble High Court vide order dated 19.4.2004. Now due to the paucity of funds and work in hand, it was not possible to continue with the same strength of casual labour is so high that they are being maintained out of the non-plan allocation which is adversely effecting the maintenance of roads and other development work in the Mandi District. It is unjustified to state that the earlier notification has been amended to fulfill efficacious designs and which is against the basic thrust of the Act.
6. That the contents contained in para No.6 of the plaint are denied as mentioned in para No.2 supra.
7. That the retrenchment of surplus labour in Dharampur Division was engaging the attention of the Govt. since long and Specified Authority i.e. Chief Engineer (CZ) HP. PWD, Mandi has given the permission for retrenchment of 1087 workmen only out of 1636, after hearing each and every workman and paying the pay of notice period and retrenchment compensation. Rest of para need no comments.

8. That the contents of para 8 of the plaint/Reference are incorrect as such denied. No grave injustice and irreparable loss will be caused to the applicant, the answering respondent has been adjudicating the matter on the basis of natural justice and by staging the implementation and execution of Notification dated 14.2.2005 and also restraining the respondent for making enquiries and adjudicating the permission, the legal sanctity of the Notification will be defeated and loss will be caused to the non-applicant/Respondent.
9. That the contents contained in para No.9 of the case are admitted to the extent that the Specified Authority Chief Engineer (CZ) Mandi has issued the notice to the workers as the employment of the workers of Dharampur Division, HP.PWD Dharampur has sought the permission under section 25(N) (2) of Industrial Dispute Act-1947 for the retrenchment of the surplus labour, rest of the averments made in this para are incorrect and as such denied. The Chief Engineer (CZ) HP. PWD, Mandi is not the appointing authority of the workers. The Notification is justified as the Himachal Public Works Department strength of work charged workers and casual workers is so high within the state that it was not feasible to settle the disputes arising from time to time under provision of the Industrial Dispute Act, 1947 by the Labour Commissioner. The Govt. deemed it proper in the light of the strength of the workers of the Himachal Pradesh Public Works Department and now vide Notification 14.2.2005, the Chief Engineer of the three Zones i.e. South Zone Shimla, Central Zone Mandi and North Zone Dharamshala were delegated powers of the specified authority for the smooth functioning of the Department and to avoid financial hardships to workers in case of the dispute arising under the provision of the Industrial Dispute Act, 1947. (Copy of Annexure annexed as Annexure-R-I, R-II, R-III, R-IV, R-V & R-VI).
10. That the contents contained in para 10 of the case need no comments as mentioned in para supras.
11. That the exercising of retrenchment has been carried out in Dharampur Division with ulterior motives is denied emphatically. The retrenchment of 1397 Nos. daily waged workers was recommended by the then Executive Engineer, of Dharampur Division on 4.10.2001. The large number of labourers were indiscriminately engaged immediately on bifurcation of Dharampur Division out of Sarkaghat Division w.e.f. November 7th 1998 about 3734 daily waged labourers were engaged additionally w.e.f. 11/1998 to 6/1999 raising the total strength of labour to 4045 Nos. That at present also the large strength of labour is being maintained out of the non-plan Allocation by diverting large Non-Plan funds to Dharampur Division at the cost of rest of the area of Mandi District. Thus adversely effecting the maintenance of roads in the Mandi District, and also effecting the state exchequer. The monthly allocation of LOC under Non-Plan Head for defraying the labour wages clearly indicates i.e. work charge in Dharampur Division 10.88 Lacs and casual LOC 57.71 Lacs so to avoid the financial hardships to workers implement the Notification dated 14.2.2005 rest of para need no comments.
12. That the contents contained in para No.12 are wrong, hence denied. The retrenchment has been made as per provision of the Industrial Dispute Act, 1947.
13. That the contents of this para are also wrong, hence denied.
14. That the contents contained in para No.14 of the case are also denied as mentioned in para supra.

15. That the contents contained in para no.15 of the case are admitted to the extent that Smt. Mamta Devi w/o Late Shri Hans Raj was retrenched with the applicant, but she has been re-engaged on compassionate ground as her husband Late Shri Hans Raj died who met with an accident, Rest of para need no comments.
 16. That the contents contained in para No.15 of the case denied, as the applicant has accepted the compensation without any protest, so the question of any gainful act does not arise at all". The petition is meritless. The services of the petitioner have been retrenched as per law. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.
4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.
5. Per order dated 11.04.2012, following issues were struck:-
1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged? . . .OPP
 2. Whether the reference is not maintainable in the present form? . . .OPR
 3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .OPR
 4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? . . .OPR
 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged? . . .OPR
 6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 :	Yes
Issue No.2 :	Not pressed
Issue No.3 :	No
Issue No.4 :	Not pressed.
Issue No.5 :	Not pressed.
Relief. :	Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Sarla Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of

HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager, no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged

as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 3/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Shakuntla Devi w/o Shri Damodar Dass, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Shakuntla Devi w/o Sh. Damodar Dass, r/o Village Baral, P.O. Baroti, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 2nd December, 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e.

08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 02.12.1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are

surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Shakuntla Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the

labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wagger no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. 02.12.1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged

as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 389/2009

Date of Institution : 18.7.2009

Date of Decision : 14.9.2012

Shri Shashi Kant s/o Shri Parma Nand, r/o Village Kohan, P.O. Sajaopiplu, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner.

Versus

1. The Sr. Executive Engineer, HPSEB Electrical Division, Kullu, H.P.
2. The Assistant Engineer, Electrical Sub Division, Nagwain, Distt. Mandi, H.P.

....Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Lalit Kumar Sharma, Adv.

For the Respondents : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Shashi Kant s/o Shri Parma Nand by i) The Sr. Executive Engineer, HPSEB Electrical Division, Kullu, H.P. ii) The Assistant Engineer, Electrical Sub Division, Nagwain, Distt. Mandi, H.P. w.e.f. 26.5.1997, without complying the provision of the Industrial Disputes Act, 1947 and provisions of Certified Standing Orders is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar on the muster roll w.e.f. 26.12.1996 in Electrical Sub Division, Nagwain, District Mandi by the respondents. He worked for 160 days and was legitimately expecting that his services will not be disengaged by the respondents except in accordance with law. On 30th June, 1997, his services were terminated by the respondents by a verbal order in contravention of the provisions of the Industrial Disputes Act, 1947 ('the Act' for short) as well as the Standing Orders issued by the Himachal Pradesh State Electricity Board. Neither any notice was served upon him nor any compensation was paid. The higher authorities kept on assuring him that as and when fresh recruitment takes place his name will be duly considered for the post of

beldar. Instead of reengaging him, the respondent/HPSEB has appointed S/Sh. Chuni Lal, Prem Chand, Leela Mani, Paras Ram and Girdhari Lal. All these persons are/were junior to him (petitioner). Not only this, two new persons namely S/Sh. Daulat Ram and Salig Ram have been engaged by the respondents. The act and conduct of the respondents is highly illegal and unjustified. The same is also violative of Sections 25-B, 25-G and 25-H of the Act. He had instituted Original Application No.3980/2000 before the Hon'ble Himachal Pradesh State Administrative Tribunal against the illegal termination order. Such original application was withdrawn by him as the Hon'ble Administrative Tribunal had no jurisdiction to deal with it with liberty to approach the appropriate Court/Forum. Thereafter, he served a demand notice upon the respondents. Conciliation proceedings were held by the Labour-cum-Conciliation Officer Mandi Zone, Mandi, but in vain. As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case.

“...the reference/petition of the claimant/applicant may kindly be allowed and the respondents be directed to reengage the claimant/applicant on the post and place, where he was serving prior to his retrenchment. The respondents be further directed to consider the claimant/applicant in the employment with all consequential benefits like seniority and arrears of salary etc. for the intervening period be also directed to be maintained and paid to the claimant/applicant and/or any other relief, to which the claimant/applicant be found entitled to in view of the facts and circumstances of the present case be also awarded to the claimant/applicant against the respondents alongwith the costs of the present reference/petition, in the interest of justice and justice be done”.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has no locus standi to sue. The claim petition has been instituted by the petitioner at a belated stage. He is estopped from filing the petition by his act, conduct and acquiescence. This Court cannot decide the matter as no proper reference has been made by the appropriate Government for adjudication. No legal or vested right of the petitioner has been infringed in any manner. He has no cause of action. The petitioner has not approached the Court with clean hands. He has suppressed the material facts from the Court. In the year 1997, the petitioner voluntarily left the service. No provision of the Act has been violated by them (respondents).

On merits, it has been owned that the services of the petitioner were engaged as a beldar on the muster roll w.e.f. 26.12.1996 in the office of the respondent No.2. The petitioner served for total 129 days in the years 1996 and 1997. His mandays chart is annexure R1. The services of the petitioner were not disengaged as alleged. He did not complete 240 days of service during the period of his employment. Therefore, no notice was required to be served upon the petitioner. He is/was also not entitled to the compensation as claimed. The petitioner abandoned the job of his own because of which he is not entitled to any protection under the Act. He (petitioner) be asked to prove by leading cogent evidence that the persons junior to him have been retained in service or the new/fresh hands have been engaged. After leaving the service in the year 1997, the petitioner never approached them (respondents) for re-engagement. The persons whose names have been disclosed by the petitioner in the petition have not been arrayed as parties. It stands admitted that a demand notice was given by the petitioner. He is not entitled to any relief. In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been disputed that in the year 1997, he willingly abandoned the job.

5. Per order dated 26.10.2010, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 26.5.1997 is in violation of the monetary provision of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to?

.. OPP

2. Whether the petition is not maintainable as alleged. If so, to what effect?

.. OPR

3. Whether the claim is barred by vice of delay and laches as alleged. If so, to what effect?

.. OPR

4. Relief.

6. I have heard the Id. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. The petitioner Shri Shashi Kant stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he did not complete 240 days of work during the period of his employment. He also denied that he left the service of his own. Further, he denied that after the year 1997, he did not approach the respondents for re-employment and no person junior to him has been engaged by his adversaries.

9. Conversely, Shri Rajeev Sood, Sr. Executive Engineer, HPSEB, Electrical Division, Kullu (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondents. In the cross-examination, he denied that the services of the petitioner were retrenched. Self stated, the petitioner abandoned the job of his own. He admitted that no notice was given to the petitioner calling upon him to resume his duties. He also admitted that the persons junior to the petitioner are working with them (respondents).

10. Ex. RW1/B is the mandays chart relating to the petitioner.

11. It is the admitted case of the respondents that the services of the petitioner were engaged as a beldar on the muster roll w.e.f. 26.12.1996 and he worked as such up-to 25.5.1997. The version of the petitioner is that his services were dispensed with by the respondents w.e.f. 26.5.1997 (as per the reference). While denying the said fact the respondents have pleaded that the petitioner abandoned the job of his own accord and free volition.

12. It is well known that the abandonment has to be proved like any other fact by the respondents/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is therein the statement of Shri Rajeev Sood (RW1) that no

notice was served upon the petitioner calling upon him to resume the duties after he allegedly left the service. Absence from duty is serious misconduct. There is not even an iota of evidence on the record to show that some disciplinary action was initiated against the petitioner by the respondents for his alleged willful absence from duty. The plea of abandonment put forth by the respondents is not established.

13. The mandays chart Ex. RW1/B clarifies that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 26.5.1997. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. It is there in the statement of the respondent No.1 (RW1) that the persons junior to the petitioner are working under him. This indicates that the respondents have failed to adhere to the principle of 'last come first go'. Their action is violative of Section 25-G of the Act. The termination of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date of his termination.

15. This issue is decided in favour of the petitioner and against the respondents.

ISSUE No. 2

16. Not pressed.

ISSUE NO. 3

17. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

18. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

19. While testifying in the Court as PW1, the petitioner has given his age as 37 years. It is common knowledge a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

20. This issue is also decided in favour of the petitioner and against the respondents.

RELIEF (ISSUE NO. 4)

21. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith (if he has not attained the age of superannuation). He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 26.5.1997 except back wages. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 32/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Shashi Pal s/o Shri Prem Singh, r/o Village Khajruti, P.O. Cholgah, Tehsil Sarkaghat,
Distt. Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh. Shashi Pal s/o Shri Prem Singh, r/o Village Khajruti, P.O. Cholgah, Tehsil Sarkaghat, Distt. Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent in the year, 1999. He

uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e. 08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has reemployed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year, 1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone,

Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Shashi Pal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the

petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him. He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year, 1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 47/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Shri Sher Singh s/o Shri Gurdial Singh, r/o Village Thati, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.

...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Sh.Sher Singh s/o Shri Gurdial Singh, r/o Village Thati, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager on the muster rolls by the respondent w.e.f. 1st January, 1999. He uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, his services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (‘the Act’ for short). He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his illegal retrenchment i.e.

08.7.2005. Before the termination of his services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to him (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to him (petitioner) were not retrenched from service alongwith him. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to him (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith him. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to him (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. He (petitioner) is unemployed from the date of his disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of his seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by his act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.1.1999 and he worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. He was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are

surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by him without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed.

Issue No.5 : Not pressed.

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Sher Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to him (PW1) and retained in service by the respondent. In the cross-examination, he admitted that Dharampur Division of HPPWD was created in the year 1998. He denied that with the creation of new Division, the labour became surplus. He admitted that 1087 other workers were removed from service alongwith him.

He denied that no person junior to him has been retained in service by the respondent and his services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of his services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 02.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. 01.1.1999 and he worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 02.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent

has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 77/2007

Date of Institution : 26.6.2007

Date of Decision : 24.9.2012

Shri Shyam Lal s/o Shri Shankar Dass, r/o Village Bhungal, P.O. Badhani, Tehsil Pathankot, District Gurdaspur, Punjab.

....Petitioner.

Versus

1. Shri Naveen Kumar Sharma s/o Shri K.C. Sharma, (Contractor), r/o Vill. Matlahar, Tehsil Jwali, District Kangra, H.P.

2. The Sub Divisional Officer, H.P.P.W.D. Sub Division, Nagrota Surian, Tehsil Jwali, District Kangra, H.P.

....Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Sharma, Adv.

For the Respondent No. 1 : Sh. Rajinder Thakur, Adv.

For the Respondent No. 2 : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the action of Shri Naveen Kumar Sharma s/o Shri K.C. Sharma, Contractor (2) Sub Divisional Officer, H.P.P.W.D. Sub Division, Nagrota Surian, Tehsil Jwali, District Kangra, H.P. not to paying balance amount of Rs.2,06,000/- of wages to Shri Shyam Lal s/o Shri Shankar Dass workman without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of amount the above aggrieved workman from the above contractor/employer is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

“1. That the opposite party/respondents are working as Govt. contractors with HP. PWD and the complainant/applicant is the Masson.

2. That the HP. PWD Division Jawali, Sub Division Nagrota Surian has to construct the building of Govt. Senior Secondary school for the purpose of construction of Science Laboratory.

3. That the Opposite party/respondents obtained the contract for construction of said building and approached the applicant/complainant for the massonary work, it was agreed between both the parties that rate of Rs.70 will be paid to the complainant/applicant per sq. feet as that of roof including all the masonry, labor, shuttering.

4. That it was agreed between both the parties that the construction of the building will be done as per the drawing and design of the building approved by HP. PWD and as per it the building has to be constructed double story and the massonary work of both these stories was to be conducted by the complainant/applicant.

5. That the complainant applicant started the work on 26.6.2005 by way of digging the foundation. The whole construction of the ground floor was done by the complainant/applicant and the roof was also laid down by way of lentil and which a total measurement of near about 2600 sq. feet. The lentil was laid on pillars which were 15 in number. But no walls could be constructed as the opposite party/respondents did not provide the door plaens and window plaens.

6. That the total rate of Rs.70 per Sq. feet was of every floor including plastering, flooring (plain) in case the flooring is to be done by way of chips the complainant/applicant was responsible only up to laying of chips.

7. That after completion of the lentil of the ground floor the complainant/applicant started the up-lifting of the pillars of the first floor and the pillars were constructed up to the lentil level by the complainant/applicant.

8. That on 8.11.05 the opposite party/respondents visited the construction spot and requested the complainant/applicant to stop the work for some period as he is not having sufficient funds to construct the same, but on 23.11.05 the applicant/complainant came to know that the opposite party has engaged some other mason for the construction and knowing on that approached the opposite party to settle his account, but the opposite party state way refused to pay the massonary labor agreed by him to the complainant, hence this application is made to you.

9. That the complainant/applicant has done a work approximately for a sum of Rs.3,64,000/- including all that agreed. But the opposite party has only paid the applicant Rs.78,000/- and the remaining amount is still lying with the opposite party. This amount also include the labour qua the laying of the walls. Plastering, flooring which has not done till date by the applicant and an approximate labour of whole this work is near about 35,000/- for that of ground floor as such including ground as well as first floor if it is calculated a total work of Rs.1,00,000/- approximately has not done by the applicant/complainant.

10. That the agreed labour to this affect was near about Rs.3,64,000/- out of which Rs.78,000/- has been received and near about labour of Rs.1,00,000/- is pending (has not done) as such the complainant/applicant is entitled to receive Rs.1,86,000/- approximately from the opposite party/ respondents, but the both opposite parties has refused to do so.

11. That the other masons were engaged by the Opposite party without any prior notice or settlement of account with the applicant/complainant.

12. That in spite of this the applicant/complainant has also dug 5 pillars near by but those were not filled as the Govt. officials refused to get them filled and a labor qua this was not also paid

by the opposite party. Also the water tank temporary was built by the complainant/applicant at the spot but no payment qua that was made by the opposite party, the stones which were excavated by the applicant/complainant from the plinth separated by him and stored near by was to be calculated for the payment extra has not been paid by the opposite party as such Rs.20,000/- has been due from the opposite party to the complainant other than the labor work agreed upon.

13. That the opposite party has illegally detained three pillar columns frames total number of 12 plates belonging to the applicant/complainant (1.26 meter x .45 Meter) per plate without any reason of interest.

14. That the applicant/complainant has engaged different labourers, machineries, shuttering for this construction and the amount to these persons has not been paid by the applicant/complainant as the payment was not paid by the opposite party and the same will be paid immediately after the amount is paid by the O.P. to the complainant/applicant. It is, therefore, humbly prayed that an amount of Rs.1,86,000/- (that of masonry work) plus Rs.20,000/- (that of extra work) i.e. total Rs. 2,06,000/- approximately is due from the opposite party to the applicant and that may be ordered to be paid”.

3. On notice, the respondents appeared. They filed separate replies controverting the averments made in the petition/statement of claim. Shri Naveen Kumar (respondent No.1) in his reply has taken the preliminary objections to the effect that the petition is bad for mis-joinder of the parties. The petitioner/claimant is estopped from filing the petition by his act and conduct. He has no locus standi to sue.

On merits, paras 1 to 14 of the reply are reproduced below verbatim for ready reference.

Para No.1: Admitted to the extent that the replying respondent is working as a Govt. Contractor but it is submitted that the petitioner was working with the replying respondent as a Mason-cum-Labour Contractor.

Para No. 2: That para No.2 of the petition is correct.

Para No. 3: That para No.3 of the petition is correct only to the extent that replying respondent obtained the contract for construction of the said building. However, it is specifically denied that there was any execution of agreement on the payment of Rs.70/- per square foot with the petitioner/applicant by the replying respondent. Rather he was merely employed as mason/cum/labour contractor on daily wages for day to day work on an oral understanding. The payment of his labour done was being collected by Sham Lal petitioner/applicant from time to time as per his own convenience and need and very often he got advance. It is further made clear that it was the replying respondent who was engaging and managing shuttering, labour for laying first floor slab and machinery required but not the petitioner/applicant as alleged by him. He was working just as a Mason-cum-Labour contractor with his usual 5 or 6 labourers including one more mason for performing day to day work.

Para No.4: That para No.4 of the petition is denied specifically being incorrect. It is not out of place to mention here that in fact no construction work of the building in question was assigned to the petitioner as per the drawing and design etc. rather it was the respondent no.1 whom the work of construction of the building in question was assigned by the H.P. PWD authorities. As a testimony to this effect, a certificate issued by the concerned Assistant Engineer, Nagrota Surian, is attached herewith as Annexure/R-1. The said building is triple storeyed instead of double storeyed as alleged by the petitioner.

Para No. 5: That the para No.5 of the petition is wrong. In fact the work was started on 1-7-2005 instead of 26.6.2005 as alleged by the petitioner, after getting the lay-out of the building from the Assistant Engineer PWD of H.P. to this effect. It is denied that the roof was laid by the petitioner. It was the respondent No.1 who arranged all extra labour and machinery for laying the first floor slab. The receipt of the payment made by the replying respondent No.1 to the hired agency named as Shri Ravi Kumar, Subhash Chand Guleria and Surinder Kumar for laying the first floor slab duly signed by the J.E./Site Engineer and Work Inspector, in whose presence the payment was made has been kept in record and photocopy is attached herewith as Annexure/R-2, R-3 and R-4 respectively. The total area of the first floor slab is nearly 1824 Sq. feet instead of 2600 Sq. feet as alleged but the petitioner, a certificate (copy) issued by the Site J.E. is attached herewith as Annexure R/5. It is denied that the plans of doors and windows were not provided by the reply respondent. In fact, all the plans and detail of the drawing/doors and windows were available.

Para No. 6: That para No.6 of the petition is denied, as baseless and incorrect. Since the petitioner was working merely on day today basis, with his labourers as such, the question of paying him at the rate of Rs.70/- per sq. feet does not arise.

Para No.7: In reply to this para, it is submitted that the petitioner/applicant did not complete the pillar work up to the level of the IInd floor slab and committed a number of irregularities especially many times absented himself from the site and this continued for a period of 3 to 4 months till first floor slab was laid. In spite of persistent efforts made by the replying respondent to persuade the petitioner to work regularly and expeditiously the petitioner did not work to the satisfaction of the respondent no.1. To this effect, a copy of the certificate issued by the Assistant Engineer concerned is already attached herewith as Annexure/R-1. The petitioner/applicant and his labourers have done a work to the tune of Rs.72,910/- which also included the payment of Rs.8000/- for column frames. Detail for this is attached herewith as Annexure/R-6. The replying respondent has already made payment to the petitioner/applicant, to the effect of Rs.95,600/- against proper receipt as per the record attached herewith as Annexure/R-7. So already overpayment of Rs.22,690/- has been made to the petitioner with the understanding that he is to work here so it would be adjusted later. Rather the petitioner demanded more advance of Rs.15,000/- for bringing more labourers accelerate the speed of work, but the replying respondent paid to the petitioner only Rs.10,000/- as cash, as advance under the compelled circumstances for arranging more labour because there was heavy pressure on the replying respondent by the PWD to speed up the work and complete it in-time. The petitioner after getting the advance of Rs.10,000/- did not turn up to the site immediately. Then, the respondent no.1 contacted the petitioner on telephone and requested him to resume the work on the site immediately as respondent was unduly getting late and work was to be finished before 31.12.2005 or he was asked to fund the over-payment of Rs.32,690/- in cash if he does not want to work. The petitioner/ applicant got irritated and furious on this and started abusing on telephone. He also made threats to proceed to the Labour Court in case overpayment is demanded.

8. That contents of para No.8 are wrong. Reply respondent always remained at the site for observing the construction work. It is also wrong that the respondent was not having sufficient funds as alleged. However, it is mentioned that after the refusal of the petitioner on phone to do work, the respondent was compelled to engage another mason and labourers to finish the work in time. The present mason and labourers are working quite efficiently and satisfactorily. A copy of the certificate to this effect as issued by the Assistant Engineer (PWD) is on record. It is further made clear that the petitioner did not turn up on the site of construction on 23.11.2005 as alleged by him.

9. That para No.9 of the application/petition is totally wrong and specifically denied. The petitioner/applicant has not done any work worth Rs.3,64,000/- including a pending work for Rs.1 lac. Since as per own admission of the petitioner in para No.5 of the petition, he completed the work up to the first floor slab and 15 pillars above the slab. It is not out of order to mention here that the payment of Rs. 1,14,449/- was made to the reply respondent by the H.P., PWD, up to the first floor slab. It is also worth mentioning that the payment of Rs. 1,14,449/- to the replying respondent no.1 also included labour, material and other expenditure of the work done. It is very strange even to presume that the petitioner is setting up the claim for such a huge sum of Rs. 3,64,000/-. So the claim of the petitioner is totally wrong, baseless and irrational. The replying respondent has already made payment to the petitioner to the tune of Rs. 95,600/- against proper receipts as per the record attached. It is further pertinent here to mention that the petitioner/applicant took more advance payment of Rs.10,000/- in cash from the replying respondent to bring more labour before leaving the work. So the total payment, which was made to the petitioner by the respondent becomes Rs. 1,06,500/- instead of Rs. 78,000/- as alleged by the petitioner. Rather the work done by the petitioner along with his labourers is only worth Rs.72,910/-, detail of which is shown in Annexure/-A. So the payment of Rs. 32,690/- (Thirty two thousand six hundred ninety) stands as over-payment with the petitioner. The second payment of Rs.20,000/- made on 18.7.2005 as shown in Annexure/A was received by Swaran Singh, whom he introduced as his youngerbrother at the time of his starting work with replying respondent. His brother also visited the site off and on. Due to fear of refunding the over-payment, the petitioner by his own whims and acts has proceeded to this Court.

Para No. 10: That contents of this para of petition is wrong hence, denied. Reply to this para may kindly be read as stated in Para No.9, of this reply.

Para No. 11: That in reply to his para it is submitted that the other masons and labourers were engaged by the replying respondent only after the refusal and absence of the petitioner from the site of work.

Para No. 12: That the contents of this para of petition are wrong because no extra payment is due to the petitioner from the replying respondent rather the petitioner has already been paid excess amount to the tune of Rs. 32,690/-.

Para No. 13: That total number of 12 plates lying at the site belong to the replying respondent as a payment of Rs.8,000/- has already been made to the petitioner by the replying respondent.

Para No. 14: That the contents of this para of petition is correct only to the extent that the petitioner has engaged labourers only. It is not the petitioner who engaged machinery, shuttering etc. Rather it was the replying respondent who engaged and paid for shuttering, machinery etc. The shuttering was hired by the replying respondent from the Private Agency named Subhash Chand Guleria. The receipt of the payment, which was made to this agency in the presence of J.E. and Work Inspector concerned by replying respondent is already filed as Annexure/R-3. the receipt of the payment of machinery hired from Agency named Surinder Kumar Panjla has also been attached as Annexure/R-4, as such, it proves that he was a labour contractor. He is not entitled to envoke the jurisdiction of the Labour Court”.

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed with costs.

4. Reply on behalf of the respondent No.2 has been filed by the Executive Engineer, HPPWD, Jawali Division. Preliminary objections have been raised to the effect that the claim

petition is not maintainable in the present form. The same is bad for non-joinder of the necessary parties and mis-joinder of the parties. His (replying respondent) name be deleted from the claim petition.

On merits, it has been owned that the respondent No.1 is working as a contractor with the HP PWD and the petitioner is a mason. It stands admitted that the Science Laboratory of Government Senior Secondary School, Nagrota Surian was to be constructed. The contract/agreement for the construction of the said building was executed by the department with the respondent No.1. The facts that the respondent No.1 (Shri Naveen Kumar) had approached the petitioner for masonry work and the rate between them was settled as Rs. 70/- per sq. ft. have been denied for want of knowledge. The building was to be erected as per the drawing and design approved by the HPPWD. The building was three storeyed. The construction work was started on 01.7.2005 by the respondent No.1. When the technical officials viz. the Junior Engineer and the Assistant Engineer visited the spot, the measurement was done. It was found that 1824 sq. ft. of the construction has been carried out by the respondent No.1 (contractor). First and second running payments were made to the contractor. As per the calculations done at the site, it came to fore that the work of approximately Rs.3,21,465/- has been done. The payment was made to the respondent No.1/contractor. He (answering respondent) has nothing to do with the claim put forth by the petitioner against the respondent No.1. As such, the respondent No.2 too prays that the instant petition be rejected.

5. In the rejoinders, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It was orally agreed between the parties that the respondents will pay @ Rs. 70/- per sq. ft. to him (petitioner) as that of the roof including masonry, labour, shuttering and machines. This fact was admitted by the respondent No. 1 in writing per annexure-A. He (petitioner) had managed and hired the shuttering @ Rs. 5.50 per sq. ft. Shuttering and labour were not arranged by the respondent No.1 as claimed. No doubt the construction work was assigned by the HPPWD to the respondent No.1, but in reality he (respondent No.1) sublet the construction work up-to the double storey to him (petitioner). He (petitioner) was informed that the work of third storey will be given after seeing the progress of work of two storeyes. The preliminary work such as removal of debris etc was initiated by him (petitioner) on 26th June, 2005 as per the instructions of the respondent No. 1. Without the removal of the waste material etc. the work of new construction could not start. It is wrong to say that he (petitioner) committed a number of irregularities or absented from work. On completion of the work to their (respondents) satisfaction up-to the first floor slab and second floor pillars, the respondent No. 1 raised an objection of unsatisfactory work just to save his skin. Payment of Rs. 95,600/- was received. The payment of Rs. 8000/- for column frames and Rs.10,000/- in cash (as advance) to bring more labour was not received. No over payment has been made by the respondent No.1 till date as alleged. He (petitioner) has done the work to the tune of Rs. 3,64,000/- including the pending work of rupees one lakh. The respondent No.1 might have received the payment from the HPPWD as per the agreement. He (petitioner) never refused to work. Actually, the respondent No.1 deliberately refused to get the work done on the pretext that the funds are not available. The construction of temporary water tank and excavation of stones of the plinth area is to be counted as extra work for which extra payment is to be made. The plates in question at the site belong to him (petitioner). The constructed area is not 1824 sq. ft. Instead, it is near about 2600 sq. ft.

6. Per order dated 17.7.2008, following issues were struck by one of my ld. Predecessors:-

1. Whether the petitioner is entitled to recover from the respondents wages amounting to Rs. 2,06,000/-?

.. OPP

2. If the above issue 1 is not proved its entirety, what amount the petitioner is entitled to recover from the respondents as wages?

... OPP

3. Relief.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No. 2 : Nil

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No. 1 and 2

9. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

10. The petitioner Shri Sham Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also produced the documents Exts. PW1/B to E, which will be discussed by me in the subsequent part of the Award. In the cross-examination, he stated that he did the work on contract basis himself as well as by engaging the labourers and the masons. He denied that he was simply a labour contractor. He cannot produce any agreement to show that the respondent No.1 had agreed to pay him the construction charges @ (Rs.70/-) per sq. ft. He denied that he used to work as a daily wager and not as a contractor. He admitted that the payment was received by him from the respondent No.1 from time to time. Self stated, the total payment was never made to him by the respondent No.1. He denied that the respondent No.1 never permitted him to raise the building independently. He admitted that three storeyed building was to be raised. He denied that in the building of three storeyes the work of construction of two storeyes is not given to an individual. He denied that he (PW1) used to remain absent from work because of which the respondent No.1 suffered the loss. He also denied that the area of the building is only 1824 sq. ft. and he left the work voluntarily on 08.11.2005. Further, he denied that he did not report for duty despite repeated requests made by the respondent No.1. He admitted that the receipts Exts. D1 to D4 bear his signatures. The receipt Ex. D5 has been signed by his brother Shri Swaran Singh. He denied that in addition to the payment received vide receipts Exts. D1 to D5, on 07.11.2005, he took Rs.10,000/- from the respondent No.1 on the pretext that the labour is to be engaged. He refuted that over payment has been made to him by the respondent No.1. He denied that the documents produced by him are forged and fictitious. He also denied that he has instituted a phoney petition. He admitted that no agreement regarding carrying out the construction work took place between him and the HPPWD (respondent No. 2). He even admitted that the respondent No.2 owes him nothing.

11. Shri Swaran Singh (PW2) is the real brother of the petitioner. In his affidavit Ex. PW2/A filed as per Order 18 Rule 4 CPC, he supported the cause of the petitioner. In the cross-examination, he denied that he is telling the lies. He too admitted that they have no claim against the HPPWD (respondent No.2).

12. Sh. Anup Lal (PW3) was allegedly engaged for the masonry work by the petitioner on payment of Rs.250/- per day on 30.6.2005. He too lent credence to the version of the petitioner. Ex.

PW3/A is the affidavit filed by him in accordance with Order 18 Rule 4 CPC. In the cross-examination, he denied that he is deposing falsely in favour of the petitioner as he is having cordial relation with him. He admitted that the HPPWD (respondent No.2) is not liable to pay anything to them.

13. Conversely, Shri Naveen Kumar (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that no rate of construction was settled between him and the petitioner. He admitted that Rs.1,05,600/- were paid by him to the petitioner.

14. Ex. PW1/B is the copy of receipt dated 12th August, 2005 issued by Shri Vivek Mankotia under Himachal Pradesh Tolls Act, 1975. It depicts that vehicle No.2376 had crossed Kandwal Barrier and paid Rs.40/- as toll tax.

15. Ex. PW1/C is the receipt dated 12.8.2005 issued by KCS Industries Pathankot. It clarifies that 12 plates of shuttering were repaired.

16. Ex. PW1/D is the receipt dated 22.10.2008 issued by one Shri Sukh Dev Singh. It clarifies that the shuttering was done by Shri Sukh Dev Singh at the behest of the petitioner @ Rs. 5.50 per sq. ft. 17. Ex. PW1/E is the copy of an agreement which had allegedly taken place between the petitioner and Shri Sukh Dev Singh for carrying out the shuttering work.

18. Ex. RW1/A2 is the copy of a certificate dated 29.12.2005 issued by the Assistant Engineer, HPPWD (B&R) Sub Division Nagrota Surian. It shows that the work for the construction of the Science Block building in Senior Secondary School Nagrota Surian was awarded to Shri Naveen Kumar (respondent No.1) on contract basis. The contractor did not sublet the work to any party. The work was started on 1st July, 2005 and the ground floor area of the building as per the drawing is/was 1805 sq. ft. which included fifteen pillars.

19. Exts. RW1/B to D are the copies of various receipts evidencing that the construction work was got done by the respondent No.1 and the shuttering too was hired by him.

20. Ex. RW1/E is the copy of a certificate issued by the Assistant Engineer, HPPWD, Sub Division Nagrota Surian. It reveals that the construction work was started on 1st July, 2005 and total area of the first floor slab laid on fifteen pillars is nearly 1824 sq. ft.

21. Ex. RW1/F is the detail of payments made by the respondent No.1 to the petitioner.

22. Since the petitioner has approached the Court/Tribunal for recovery of the balance amount of Rs.2,06,000/- as wages from the respondent No.1, a duty is cast upon him to prove his case.

23. The receipts Exts. PW1/B and C do not bear the name of the petitioner. The owner or driver of vehicle No.2376 has not been examined by the petitioner to say that he (petitioner) got the plates of shuttering repaired or transported them to the site of the construction for carrying out the building work.

24. Coming to the receipt Ex. PW1/D issued by Shri Sukh Dev Singh, I will like to say that the same saw the light of the day on 22.10.2008 i.e. during the pendency of the instant claim petition. Therefore, it has little evidentiary value. The agreement Ex. PW1/E dated 01.7.2005 which allegedly took place between the petitioner and Shri Sukh Dev Singh was not written on any stamp

paper etc. Such type of documents can be easily fabricated on plain papers showing that they came into existence on a particular date as per the wishes of a party.

25. The entire edifice built by the petitioner crumbles down in view of the certificates Exts. RW1/A2 and RW1/E issued by the Assistant Engineer, HPPWD, Sub Division, Nagrota Surian. Their perusal discloses that the work was started at the spot on 1st July, 2005. The contractor Shri Naveen Sharma (respondent No.1) did not sublet the work to anyone else and the total area of the first floor slab laid on fifteen pillars is nearly 1824 sq. ft. In view of these facts, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that the construction work was given on contract basis to him by the respondent No.1 and the slab of approximately 2600 sq. ft. was laid by him at the spot? It is not the case of the petitioner that the Assistant Engineers who issued the certificates Exts. RW1/A2 and RW1/E, are inimical towards him. Moreover, the petitioner has not placed on the record any document evidencing that the lentil of near about 2600 sq. ft. was laid by him.

26. At the time of the cross-examination of the respondent No. 1 (RW1) a question was put in the suggestive form to him by the petitioner, which reads thus:-

‘यह ठीक है कि हमारा कोई लम-सम रेट तह न हुआ था और न ही कोई आइटम रेट की बात हुई’

27. This belies the version of the petitioner that the respondent No.1 had promised to pay him Rs. 70/- per sq. ft. for the construction work undertaken by him (petitioner).

28. As already mentioned Shri Swaran Singh (PW2) is the real brother of the petitioner. He is thus an interested witness. So far as Shri Anup Lal (PW3) is concerned, his name was not disclosed as a mason by the petitioner (PW1). Therefore, PW3 seems to be a procured witness. The depositions made by PWs 2 and 3 in no way help the petitioner.

29. Otherwise too, from the evidence available on the record, it can be gathered that the running payment of Rs.1,14,449/- was made by the respondent No.2 to the respondent No.1 including the labour, material and other expenditure up-to the first floor slab. A person will certainly not sublet the work for construction to another person for a higher amount than what he (contractor) himself will get. The claim of the petitioner is fallacious.

30. Such being the situation, I have no hesitation to say that the respondent No.1 is not liable to pay any sum to the petitioner by way of the wages etc. He (petitioner) is not entitled to any relief.

30A. These issues are decided against the petitioner/claimant.

RELIEF (ISSUE NO. 3)

31. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless fails. It is, therefore, dismissed. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref No. : 211/2007

Date of Institution : 03.12.2007

Date of Decision : 05.9.2012

Shri Som Dutt s/o Shri Paras Ram, r/o Village Baila, P.O. Nandi, Tehsil Chachiot, District
Mandi, H.P.

....*Petitioner.*

Versus

The Divisional Forest Officer, Kullu, Forest Division Kullu, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.R. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Som Dutt s/o Shri Paras Ram workman by the Divisional Forest Officer, Kullu, HP w.e.f. 01.6.2003, without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of September, 1997. He continuously worked as such in Forest Range, Manali. On 01.6.2003, his services were wrongly and illegally terminated by the respondent in contravention of the provisions of the Industrial Disputes Act, 1947, (‘the Act’ for short). A demand notice was then served upon the respondent by him. Copy of the demand notice was forwarded to the Labour-cum-Conciliation Officer, Mandi. During the conciliation proceedings, the respondent admitted that he (petitioner) continuously worked up-to the year 2002. In the reply before the Labour-cum-Conciliation Officer, the respondent took the plea that on 10.12.2002 he (petitioner) was on duty at Forest Check Post, Palchan. During his duty hours a truck loaded with illicit timber crossed the check post. The said truck was later on apprehended by the Manali Police. Memo dated 16.6.2003 was served upon him

(petitioner) by the Range Forest Officer, Manali calling for his explanation. The explanation dated 19.6.2003 was submitted by him. An inquiry was conducted and in the inquiry report, it was mentioned that the services of two daily wagers (petitioner and his companion) have already been disengaged. The Range Forest Officer, Manali has himself played the role of the Inquiry Officer and the Disciplinary Authority. He (petitioner) has been victimized due to the negligence of the regular employees posted at Check Post, Palchan. He (petitioner) challenged his illegal retrenchment before the Hon'ble Administrative Tribunal by instituting an original application. His services have been dispensed with without following the principle of natural justice in violation of Sections 25-F of the Act. As such, he (petitioner) prays that his termination be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority and payment of back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner is estopped from filing the petition by his act and conduct. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. The petition suffers from the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager in Manali Range. He worked intermittently from the year 1997 to 2003. The petitioner worked for 69 days in the year 1997, 261 days in the year 1998, 192 days in the year 1999, 173 days in the year 2000, 286 days in the year 2001, 268 days in the year 2002 and 26 days in the year 2003. The services of the petitioner were engaged for seasonal work as per the availability of work and funds. Due to the incident dated 10.12.2002, which took place at Forest Check Post, Palchan, FIR No.262/2002 dated 10.12.2002 was registered in Police Station, Manali regarding illegal transportation of timber through the said check post. The petitioner was directed to work in other plantation/nursery instead of the check post. Despite the said fact, he continued to work at the check post upto 31.12.2002. Because of the fear of the police investigation, the petitioner left the work willfully and did not turn up for three months. He reported in the month of April, 2003 and was engaged as a daily wager in Kothi Nursery. The petitioner did not continue working in that nursery for the reasons best known to him. Actually, the petitioner never turned up to work since the police investigation with regard to the illegal transportation of the timber was in progress. The services of the petitioner were not disengaged as alleged. It stands admitted that the explanation of the petitioner was called. His explanation was sought only in the preliminary inquiry to find out as to which particular official is at fault and is responsible for the illicit transportation of the timber. No provision of the Act has been infringed. The petition is false and baseless. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that he left the service voluntarily or absented from work due to the fear of the police. It has been disputed that he was directed to work in the other plantation/nursery.

5. Per order dated 07.6.2010, following issues were struck by my Id. Predecessors:

1. Whether the termination of the petitioner w.e.f. 01.6.2003 is violative of the provisions of the Industrial Disputes Act as alleged. If so what relief the petitioner is entitled to?

.. OPP

2. Whether the petition is not maintainable as alleged. If so, to what effect?

.. OPR

3. Whether the petition suffers from the vice of delay and laches as alleged. If so, to what effect?

. . OPR

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. The petitioner Shri Som Dutt stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that he served the respondent/department from the year 1997 to 2003. He admitted that he worked for more than 240 days only in the years 1998, 2001 and 2002. He does not know that FIR No.262/2002 was registered with respect to the transportation of illicit timber when he was posted at Forest Check Post, Palchan. He denied that he was being called by the police in connection with investigation of the said case. He also denied that the respondent/department then transferred him from Forest Check Post, Palchan to the nursery and despite the said fact he kept working on the check post up-to 31.12.2002. He refuted that on the said date he absented from duty and thereafter remained underground from January, 2003 to March, 2003 because of the fear of the police. He admitted that in April, 2003, he served for 26 days only. He even admitted that his services were not dispensed with by the respondent in the month of January, 2003. Self stated, his services were disengaged due to the transportation of the illicit timber. He denied that no fictional breaks were ever given to him by the respondent and he is not entitled to the reemployment etc.

9. Conversely, Shri Anil Kumar Sharma, Divisional Forest Officer, Kullu (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him. In the cross-examination, he stated that the petitioner was not joined during the inquiry proceedings. Ex. RW1/E is the copy of the MB containing the names of the persons who were on duty at the relevant time. He admitted that the petitioner had stated during the inquiry that at the crucial time, he was away to Manali to take the medicine. He admitted that neither any notice was served upon the petitioner calling upon him to resume his duties nor an inquiry was conducted against him. He also admitted that the petitioner was not arrayed as an accused in the FIR registered by the police. He admitted that Original Application preferred before the Hon'ble Administrative Tribunal was rejected because of want of jurisdiction. He denied that the petitioner was not engaged for seasonal work and his services were terminated in a wrongful manner.

10. Mark-X is the copy of the order dated 11.8.2004 passed by the Hon'ble Administrative Tribunal in O.A. (M) No.189/2003 titled as Tulsi Ram vs. State of H.P. Its perusal discloses that the original application preferred by the applicant Sh. Tulsi Ram was dismissed as withdrawn with liberty to avail the remedy available to him under the Act.

11. Ex. RW1/B is the copy of the report given by the Station House Officer, Police Station, Manali in FIR No.262/2002, dated 10.12.2002. It depicts that after the trial, accused Puran Chand and Roshan Lal were acquitted by the Ld. Judicial Magistrate, Manali on 16.3.2006. The other accused namely S/Sh. Sharif Mohamad, Jogi Ram and Amar Nath were convicted.

12. Ex. RW1/C is the copy of the statement of Shri Som Dutt (petitioner).

13. Ex. RW1/D is the copy of the memorandum dated 20.6.2006 served upon Shri Jagar Nath (Dy. Ranger) and Shri Mohar Singh (Chowkidar) of Forest Check Post, Palchan by the Conservator of Forests, Kullu. The articles of charge were annexed to it.

14. Ex. RW1/E is the copy of the MB No. 86.

15. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

16. It is not the case of the respondent that the petitioner was arrayed as an accused in FIR No.262/2002, which was registered in Police Station, Manali regarding the illegal transportation of the timber in a truck which crossed Forest Check Post, Palchan. It is also not the case of the respondent that some domestic inquiry was conducted against the petitioner in which he was indicted because of which his services were terminated.

17. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the month of September, 1997 and he worked intermittently as such up-to the month of April, 2003. The version of the petitioner is that his services were wrongly and illegally terminated by the respondent w.e.f. 01.6.2003. While denying the said fact, the respondent has maintained that the petitioner abandoned the job of his own accord and free volition due to the fear of the police as the investigation of FIR No. 262/2002 was in progress.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is not the case of the respondent that a notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the job. Absence from duty is serious misconduct. There is not even an iota of evidence on the record to show that some disciplinary action was initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. Otherwise too, the copy of letter dated 07.1.2003 written by the Range Officer, Manali to the respondent is there on the record. In para 6 of this letter, it has been clearly mentioned that the services of two daily wagers have already been disengaged.

19. The assertion of the respondent that the petitioner left the job due to the fear of the police seems to be totally false and baseless in view of the fact that the complicity of the petitioner was not found in the crime in question at the time of the inquiry/investigation. As already mentioned the petitioner was not arrayed as an accused by the police in FIR No.262/2002.

20. Section 25-F of the Act postulates as under:-

“25-F. **Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. There is nothing on the file to show that the mandatory provisions of the above Section were complied with by the respondent before terminating the services of the petitioner. The version of the respondent that the services of the petitioner were engaged only for seasonal work subject to the availability of the work and budget does not appear to be true as the same is not supported by any documentary evidence. Rather, from the mandays chart of the petitioner placed on the record by the respondent it can be gathered that he had worked for 268 days in the year 2002. This indicates that the petitioner used to work with the respondent continuously.

22. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been disengaged by the respondent wrongly and illegally.

23. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 2

24. Not pressed.

ISSUE NO. 3

25. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

26. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed.

27. While testifying in the Court as PW1 the petitioner has given his age as 36 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

28. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 4)

29. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.6.2003 except back wages. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 36/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Sudi Devi w/o Shri Raghu, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Sudi Devi w/o Shri Raghu, r/o Village Kapahi, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to

what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent w.e.f. February, 1999. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her reengagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been re-engaged without providing an opportunity of reemployment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

"1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.

2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.

3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wagger on the muster roll w.e.f. February, 1999 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone, Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Reengagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Sudi Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex. PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll w.e.f. February, 1999 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This

shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the petitioner, who was appointed in the year 1999. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 38/2012

Date of Institution : 02.1.2012

Date of Decision : 13.09.2012

Smt. Sukri Devi w/o Shri Prem Singh, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P.

....*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.

....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N. L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of services of Smt. Sukri Devi w/o Shri Prem Singh, r/o Village Gehra Trembla, P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. (B&R) Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager on the muster rolls by the respondent in the year 1998. She uninterruptedly worked as such up-to 07.7.2005. On 08.7.2005, her services were disengaged by

the respondent by issuing three months notice and paying the retrenchment compensation as envisaged under Section 25-N of the Industrial Disputes Act, 1947 ('the Act' for short). She had completed 240 days of work in each and every calendar year of her employment as well as in a block of 12 calendar months preceding the date of her illegal retrenchment i.e. 08.7.2005. Before the termination of her services, the respondent has not provided any seniority list of the daily wagers working under him (respondent). 35 persons junior to her (petitioner) namely S/Sh. Subhash Chand, Shashi Kant and Bidhi Chand etc. have been retained in service by the respondent. Shri Dharampal s/o Sh. Sarwan Ram was appointed as daily waged beldar by the respondent in the month of November, 1998, whereas, the services of Sh. Shashi Kant were engaged by the respondent in the year 2000. The persons junior to her (petitioner) were not retrenched from service alongwith her. The respondent has not followed the principle of 'last come first go'. Not only this, one Smt. Mamta Devi w/o late Shri Hans Raj was appointed by the respondent in the year 2000. She is/was junior to her (petitioner). Her services were also dispensed with by the respondent w.e.f. 08.7.2005 alongwith her. Smt. Mamta Devi has been re-engaged by the respondent in the year 2007. At the time of her re-engagement, an opportunity of re-employment was not given to her (petitioner). In the month of September, 2009, 43 retrenched workmen have been re-engaged by the respondent. At the time of their re-engagement, the principle of 'last come first go' has not been adhered to. Junior retrenched workmen have been reengaged without providing an opportunity of re-employment to the seniors. The retrenchment orders dated 02.7.2005 and 04.7.2005 passed by the respondent have already been set aside by this Court and confirmed by the Hon'ble High Court of Himachal Pradesh. The respondent has re-employed more than 600 retrenched workmen. They have also been paid the compensation amounting to Rs.50,000/- each. She (petitioner) is unemployed from the date of her disengagement. The act and conduct of the respondent is illegal and unjustified. It also contravenes the provisions of Sections 25-G and 25-H of the Act. As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

- “1. That the Hon'ble Court kindly be set aside the illegal retrenchment order passed by the respondent dated 02.07.2005/04.07.2005 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits.
2. The Hon'ble Court further directed to respondent to regularize the services of applicant on the basis of policy framed by the State Government and on the basis of her seniority fall in the cadre post.
3. The Hon'ble Court kindly be directed to respondent to pay the 9% interest on back wages and pay the Rs.5000/- as litigation cost as well as counsel fee. And if any other relief deemed fit may kindly be granted in the favour of applicant in the interest of justice”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition/reference is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition suffers from the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1998 and she worked continuously as such up-to 07.7.2005. It stands admitted that the services of the petitioner were terminated w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act. The retrenchment of the daily wagers has been ordered as per the decision of the Specified Authority-cum-Chief Engineer, Central Zone,

Mandi. Three months notice and retrenchment compensation were given to the petitioner. She was also afforded an opportunity of being heard before the retrenchment. The fact that some junior daily wagers are working in Dharampur Division of the HPPWD has been admitted. The juniors are working due to the nonavailability of the seniority of the workers who were transferred from other Divisions/Sub Divisions. The retrenchment notices have also been given to the juniors who are surplus. It stands admitted that the services of Smt. Mamta Devi were retrenched alongwith the petitioner. She has been reengaged on compassionate grounds as her husband Shri Hans Raj died in an accident. In the month of September, 2009, 43 retrenched workmen have been re-employed after obtaining the legal opinion from the Law Department and sanction from the Chief Engineer, Central Zone, Mandi. Re-engagement has been carried out as per the Awards passed by this Court. The facts that more than 600 retrenched workmen have already been reengaged and paid the compensation amounting to Rs.50,000/- each have not been agitated. The compensation paid to the petitioner was accepted by her without any protest. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 10.4.2012, following issues were struck:-

1. Whether the retrenchment of the services of the petitioner w.e.f. 08.7.2005 by the respondent is illegal and unjustified as alleged?

.. OPP

2. Whether the reference is not maintainable in the present form?

.. OPR

3. Whether the reference/petition suffers from the vice of delay and laches as alleged. If so, its effect?

.. OPR

4. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect?

.. OPR

5. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged?

.. OPR

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed.

Issue No. 5 : Not pressed.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Smt. Sukri Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record the mandays chart Ex.

PW1/B in respect of the workman Shri Shashi Kant, who is/was junior to her (PW1) and retained in service by the respondent. In the cross-examination, she admitted that Dharampur Division of HPPWD was created in the year 1998. She denied that with the creation of new Division, the labour became surplus. She admitted that 1087 other workers were removed from service alongwith her. She denied that no person junior to her has been retained in service by the respondent and her services have been dispensed with in a rightful manner.

9. Conversely, Sh. Prakash Chand, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In his cross-examination, he admitted that the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of the termination of her services. He also admitted that Smt. Mamta Devi w/o Shri Hans Raj was engaged as daily waged beldar. Her services were terminated w.e.f. 08.7.2005. The copy of the termination notice in respect of Smt. Mamta Devi is Ex. RW1/C. He admitted that Smt. Mamta Devi was re-engaged as daily waged beldar in the year 2008. Self stated, she was re-employed on compassionate grounds as her husband Shri Hans Raj died in harness. He cannot say that Shri Hans Raj (husband of Smt. Mamta Devi) expired in the year 1999. He denied that Smt. Mamta Devi was junior to the petitioner. Before re-engaging her services as a daily wager no opportunity of re-employment was afforded to the petitioner. He refuted that at the time of the termination of the services of the petitioner, the work and funds were available.

10. Ex. RW1/A is the copy of the order dated 17.6.2005 passed by the Specified Authority i.e. Chief Engineer, Central Zone, Mandi. As per this order, the Specified Authority gave the permission to retrench a number of workmen.

11. Ex. RW1/B is the seniority list of daily waged beldars in respect of the office of the respondent who have completed eight years of service up-to 31.3.2008.

12. Ex. RW1/D is the copy of the termination notice dated 04.7.2005 served upon the petitioner by the respondent. It unfolds that the services of the petitioner were ordered to be disengaged w.e.f. 08.7.2005.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on the muster roll in the year 1998 and she worked as such continuously up-to 07.7.2005. Admittedly, the services of the petitioner were terminated by the respondent w.e.f. 08.7.2005 by taking recourse to the provisions of Section 25-N of the Act, after issuing the notice dated 04.7.2005, the copy of which is Ex. RW1/D. The termination notice Ex. RW1/D was issued by the respondent pursuant to the order dated 17.6.2005 (Ex. RW1/A) passed by the Specified Authority-cum-Chief Engineer, HPPWD, Central Zone, Mandi. This order has already been held to be bad in the eyes of law by this Court and the Hon'ble High Court of Himachal Pradesh.

14. The respondent in his reply has admitted that the persons junior to the petitioner are serving under him. The said fact also finds support from the seniority list/year-wise mandays chart Ex. PW1/B pertaining to the workman namely Shri Shashi Kant s/o Shri Bihari Lal. Browsing of Ex. PW1/B reveals that services of Shri Shashi Kant were initially engaged by the respondent in the year 2000 i.e. after the appointment of the petitioner. Shri Shashi Kant is junior to the petitioner and his services were not terminated by the respondent alongwith the petitioner on 08.7.2005. This shows that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act.

15. Not only this, the seniority list Ex. RW1/B reveals that Smt. Mamta Devi (serial No.648) was initially engaged by the respondent in the year 2000. She is/was junior to the

petitioner, who was appointed in the year 1998. Her services were also dispensed with after issuing the notice Ex. RW1/C alongwith the petitioner w.e.f. 08.7.2005. Smt. Mamta Devi was re-engaged as a daily wager in the year 2008. At the time of re-engaging her services, an opportunity of re-employment was not afforded to the petitioner. Therefore, it can be safely said that the respondent has also flouted the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

16. Admittedly, more than 1000 workmen were removed from service by the respondent. Majority of them raised the industrial dispute. The claim petitions preferred by them have been allowed by this Court. The Awards pronounced by this Court have been affirmed by the Hon'ble High Court of Himachal Pradesh. While ordering the reinstatement of the workmen, the Hon'ble High Court has also directed the respondent to pay a lump sum amount of Rs.50,000/- to each and every workman in lieu of the back wages and compensation etc. In order to avoid discrimination amongst the workmen, the petitioner is also entitled to these reliefs.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2, 4 and 5

18. Not pressed.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting her the relief(s) claimed.

21. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO. 6)

22. As a sequel to my findings on the various issues, the present claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her illegal termination i.e. 08.7.2005. The respondent is also directed to pay lump sum amount of Rs.50,000/- to the petitioner in lieu of the back wages and compensation etc. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.
(CAMP AT MANDI)**

Ref No. : 10/2008

Date of Institution : 17.1.2008

Date of Decision : 05.9.2012

Shri Tulsi Ram s/o Shri Ganga Ram, r/o Village Baila, P.O. Nandi, Tehsil Chachiot, District Mandi, H.P.

....Petitioner.

Versus

The Divisional Forest Officer, Kullu, Forest Division Kullu, H.P.

....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.R. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Tulsi Ram s/o Shri Ganga Ram, Village Baila P.O. Nandi, Tehsil Chachiot, District Mandi workman by the Divisional Forest Officer, Kullu, Forest Division, Kullu, H.P. w.e.f. 01.06.2003, without complying with the provisions of ibid Act & Rule, is illegal and justified?, if not, what amount of arrears of back wages, seniority, past service benefits and compensation the above aggrieved Exworker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of September, 1992. He continuously worked as such in Forest Range, Manali. On 01.6.2003, his services were wrongly and illegally terminated by the respondent in contravention of the provisions of the Industrial Disputes Act, 1947, (‘the Act’ for short). A demand notice was then served upon the respondent by him. Copy of the demand notice was also forwarded to the Labour-cum-Conciliation Officer, Mandi. During the conciliation proceedings, the respondent admitted that he (petitioner) continuously worked up-to the year 2002. In the reply before the Labour cum-Conciliation Officer,

the respondent took the plea that on 10.12.2002, he (petitioner) was on duty at Forest Check Post, Palchan. During his duty hours, a truck loaded with illicit timber crossed the check post. The said truck was later on apprehended by the Manali Police. Memo dated 16.6.2003 was served upon him (petitioner) by the Range Forest Officer, Manali calling for his explanation. The explanation dated 19.6.2003 was submitted by him. An inquiry was conducted and in the inquiry report it was mentioned that the services of two daily wagers (petitioner and his companion) have already been disengaged. The Range Forest Officer, Manali has himself played the role of the Inquiry Officer and the Disciplinary Authority. He (petitioner) has been victimized due to the negligence of the regular employees posted at Check Post, Palchan. He (petitioner) challenged his illegal retrenchment before the Hon'ble Administrative Tribunal by instituting an original application. His services have been dispensed with without following the principle of natural justice in violation of Sections 25-F of the Act. As such, he (petitioner) prays that his termination be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority and payment of back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner is estopped from filing the petition by his act and conduct. The petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court. The petition suffers from the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager in Manali Range. He worked intermittently from the year 1992 to 2002. The petitioner worked for 181 days in the year 1992, 195 days in the year 1993, 172 days in the year 1994, 147 days in the year 1995, 208 days in the year 1996, 244 days in the year 1997, 302 days in the year 1998, 268 days in the year 1999, 90 days in the year 2000, 243 days in the year 2001, 273 days in the year 2002 and 26 days in the year 2003. The services of the petitioner were engaged for seasonal work as per the availability of work and funds. Due to the incident dated 10.12.2002, which took place at Forest Check Post, Palchan, FIR No.262/2002, dated 10.12.2002 was registered in Police Station, Manali regarding illegal transportation of timber through the said check post. The petitioner was directed to work in other plantation/nursery instead of the check post. Despite the said fact, he continued to work at the check post up-to 31.12.2002. Because of the fear of the police investigation, the petitioner left the work willfully and did not turn up for three months. He reported in the month of April, 2003 and was engaged as a daily wager in Kothi Nursery. The petitioner did not continue working in that nursery for the reasons best known to him. Actually, the petitioner never turned up to work since the police investigation with regard to the illegal transportation of the timber was in progress. The services of the petitioner were not disengaged as alleged. It stands admitted that the explanation of the petitioner was called. His explanation was sought only in the preliminary inquiry to find out as to which particular official is at fault and is responsible for the illicit transportation of the timber. No provision of the Act has been infringed. The petition is false and baseless. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been denied that he left the service voluntarily or absented from work due to the fear of the police. It has been disputed that he was directed to work in the other plantation/nursery.

5. Per order dated 11.8.2009, following issues were struck by one of my Id. Predecessors:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 01.6.2003?

.. OPP

2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?
... OPP
 3. Whether the petitioner was engaged as daily waged beldar subject to availability of works and funds?
... OPR
 4. Whether the petitioner had abandoned the job on his own and his services were never terminated by the respondent?
... OPR
 5. Whether the petition is not maintainable?
... OPR
 6. Relief.
... OPR
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
 7. For the reasons detailed here under, my findings on the above issues are as follows:-

 Issue No. 1 : Yes
 Issue No. 2 : Yes
 Issue No. 3 : No
 Issue No. 4 : No
 Issue No. 5 : Not pressed.
 Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 4

8. Being interlinked and to avoid the repetition, all these issues are taken up together for adjudication.

9. The petitioner Shri Tulsi Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that he served the respondent/department from the year 1992 to 2002. In the year 2002, his services were terminated by the respondent on the pretext that a vehicle carrying illicit timber has crossed the check post. He (PW1) was not on duty at the relevant time. He denied that he went underground because of the fear of the police and did not report for his duties. He denied that after he worked in the month of April, 2003 the police again called him for interrogation, whereafter, he left the service voluntarily. He denied that the truck carrying the timber crossed Forest Check Post, Palchan, illegally due to his fault. He admitted that he makes both the ends meet by doing the work of agriculture. He denied that he is not entitled to the re-employment and compensation etc.

10. Conversely, Shri Anil Kumar Sharma, Divisional Forest Officer, Kullu (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him. In the cross-examination, he deposed that as per the record the petitioner had worked for 12 years up-to the year 2003. In many years he had not completed 240 days of work. He denied that artificial breaks used to be given to the petitioner during the period of his employment so that he does not complete 240 days of work. He denied that the services of the petitioner were disengaged by him. No notice was given to the petitioner after he left the job. During the domestic inquiry, it had come that the petitioner was not present at the crucial time on the check post. He denied that the services of the petitioner were terminated in violation of the provisions of the Act and he has given a phoney statement.

11. Mark-X is the copy of the order dated 11.8.2004 passed by the Hon'ble Administrative Tribunal in O.A. (M) No.189/2003 titled as Tulsi Ram vs. State of H.P. Its perusal discloses that the original application preferred by the applicant/petitioner was dismissed as withdrawn with liberty to avail the remedy available to him under the Act.

12. Ex. R1 is the copy of the memorandum dated 20.6.2006 served upon Shri Jagar Nath (Dy. Ranger) and Shri Mohar Singh (Chowkidar) of Forest Check Post, Palchan by the Conservator of Forests, Kullu. The articles of charge were annexed to it.

13. Ex. R2 is the copy of the report given by the Station House Officer, Police Station, Manali in FIR No.262/2002 dated 10.12.2002. It depicts that after the trial accused Puran Chand and Roshan Lal were acquitted by the Ld. Judicial Magistrate, Manali on 16.3.2006. The other accused namely S/Sh. Sharif Mohamad, Jogi Ram and Amar Nath were convicted.

14. Ex. R3 is the copy of the MB No. 86.

15. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

16. It is not the case of the respondent that the petitioner was arrayed as an accused in FIR No.262/2002, which was registered in Police Station, Manali regarding the illegal transportation of the timber in a truck which crossed Forest Check Post, Palchan. It is also not the case of the respondent that some domestic inquiry was conducted against the petitioner in which he was indicted because of which his services were terminated.

17. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager in the month of September, 1992 and he worked intermittently as such up-to the month of April, 2003. The version of the petitioner is that his services were wrongly and illegally terminated by the respondent w.e.f. 01.6.2003. While denying the said fact the respondent has maintained that the petitioner abandoned the job of his own accord and free volition due to the fear of the police as the investigation of FIR No. 262/2002 was in progress.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is not the case of the respondent that a notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the job. Absence from duty is serious misconduct. There is not even an iota of evidence on the record to show that some disciplinary action was initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. Otherwise too, the copy of letter dated 07.1.2003 written by the Range Officer, Manali to the respondent is there on the record. In para 6 of this letter it has been clearly mentioned that the services of two daily wagers have already been disengaged.

19. The assertion of the respondent that the petitioner left the job due to the fear of the police seems to be totally false and baseless in view of the fact that the complicity of the petitioner was not found in the crime in question at the time of the inquiry/investigation. As already mentioned, the petitioner was not arrayed as an accused by the police in FIR No.262/2002.

20. Section 25-F of the Act postulates as under:-

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

21. There is nothing on the file to show that the mandatory provisions of the above Section were complied with by the respondent before terminating the services of the petitioner. The version of the respondent that the services of the petitioner were engaged only for seasonal work subject to the availability of the work and budget does not appear to be true as the same is not supported by any documentary evidence. Rather, from the mandays chart of the petitioner placed on the record by the respondent it can be gathered that he had worked for 273 days in the year 2002. This indicates that the petitioner used to work with the respondent continuously.

22. Such being the situation, I have no hesitation to conclude that the services of the petitioner have been disengaged by the respondent wrongly and illegally.

23. Coming to the payment of the back wages to the petitioner, I will like to say that in his cross-examination, the petitioner (PW1) has admitted that he earns his livelihood by doing the work of agriculture. While appearing in the Court as PW1, the petitioner has given his age as 38 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is, thus, not entitled to the back wages.

24. These issues are decided in favour of the petitioner and against the respondent.

ISSUE NO. 5

25. Not pressed.

RELIEF (ISSUE NO. 6)

26. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 01.6.2003 except back wages. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of September, 2012.

By order,
RAJAN GUPTA,
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.